SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 692.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	4	2
Petition for writ of error	6	2
Bond on writ of error	11	5
Assignment of errors	13	6
Amendment to assignment of errors	22a	10
Bill of exceptions	23	11
Statement of proceedings	23	11
Specification of errors	24	12
Designation of parts of record	24	12
Judge's certificate	26	12
Clerk's certificate	26	13
Transcript of record	29	13
Index	29	13
Indictment	30	14
Brief of evidence	32	14
Testimony of M. E. Bridges	32	14
Solomon Brantley	36	16
W. R. Shepperd	37	17
Hamp Kennedy	46	21
M. L. Gross	53	24
John Joiner	53	24
Harris Joiner	56	26
Defendant (supplemental)	57	26
Judge's certificate to brief of evidence	57	26
Special plea of former jeopardy	58	26
Order overruling plea, etc	61	28
Affidavit of poverty	62	28
Clerk's certificate	63	29

31406—10——1

	Original.	Print.
Opinion	65	29
Judgment, May 12, 1909	77	35
Indictment	78	35
Verdict and judgment	80	36
Bill of exceptions	81	36
Statement of proceedings	82	37
Designation of parts of record	82	37
Judge's certificate	83	37
Clerk's certificate	84	38
Opinion	85	38
Judgment, August 14, 1909	88	39
Clerk's certificate	89	40
Motion to amend motion for new trial	90	40
Order overruling motion for new trial	92	41
Clerk's certificate	93	41

1-2 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the Supreme Court of the State of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Georgia, defendant in error, and Solomon Brantley, plaintiff in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of said plaintiff, Solomon Brantley, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
3 the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington, within 30 days from the date thereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Fish, chief justice of the Supreme Court of the State of Georgia, the 15th day of September, in the year of our Lord one thousand nine hundred and nine.

O. C. FULLER,
Clerk of the Circuit Court of the United States for the Northern District of Georgia.

Allowed by Wm. H. Fish, Chief Justice of the Supreme Court of the State of Georgia.

Filed in office, Sept. 15, 1909.

Z. D. HARRISON,
Clerk Supreme Court of Ga.

4 In the Supreme Court of the United States.

United States of America to the State of Georgia, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Georgia, wherein Solomon Brantley is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Fish, Chief Justice of the Supreme Court of the State of Georgia, this the 14th day of September, in the year of our Lord one thousand nine hundred and nine.

WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

On this the 15 day of September, in the year of our Lord one thousand nine hundred and nine, personally appeared before me, the subscriber, John Randolph Cooper, and makes oath that he delivered a true copy of the within citation to Governor Hoke Smith and John C. Hart, attorney-general.

JOHN R. COOPER,
5 *Attorney for Solomon Brantley, Plaintiff in Error.*

Sworn to and subscribed this the 15 day of September, 1909.

Z. D. HARRISON,
Clerk Supreme Court of Ga.

Due and legal service of the within citation hereby acknowledged and copy of the same received.

This the 15 day of Sept. *15*, 1909.

JNO. C. HART,
Attorney-General of Georgia.
JOSEPH M. BROWN,
Governor of Georgia.

Filed in office, Sept. 15, 1909

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

6 *To the Honorable William H. Fish, chief justice of the Supreme Court of the State of Georgia:*

1. Your petitioner, Solomon Brantley, respectfully represents and shows to this honorable court that he is a citizen of the State of Georgia and of the United States, and a resident of the county of Washington.

2. Petitioner is now confined in the common jail of Washington County under a conviction and sentence for murder for life, convicted at the last March term of Washington Superior Court, 1909, under a bill of indictment charging him with the offense of murder. Your petitioner shows that he was first tried and convicted in Washington Superior Court for the offense of voluntary manslaughter and was sentenced to the penitentiary for the term of seven years. He appealed his case to the Court of Appeals of the State of Georgia and obtained a new trial, and at the next March term of Washington Superior Court, 1909, he was for the second time arraigned and called upon to plead to the very same indictment for murder in the same identical case. The defendant on arraignment pleaded former jeopardy autrefois acquit. He alleges that he can not be arraigned for murder after being acquitted of murder by a jury of his country; that he can only be arraigned and tried for the offense of voluntary manslaughter.

7 3. Your petitioner shows to this honorable court that when said special plea in bar was made, claiming his fundamental right to be not placed in jeopardy for the same offense for the second time, that the trial court then and there overruled the special plea in bar and sustained the demurrer of the State to said plea, and ordered the trial to proceed. To which ruling of the court the defendant then and there excepted, and claimed his exemption from second jeopardy under the Constitution and laws of the United State*d*.

4. Your petitioner shows that the ruling of the court and the ruling of the Supreme Court denied your petitioner of his fundamental right guaranteed to him by the fifth amendment of the Constitution of the United State*d*, including the statement, " Nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb, nor be deprived of life, liberty, or property without due process of law."

5. Your petitioner further shows that he has been denied the fundamental right guaranteed to him by the fourteenth amendment of the Constitution of the United States which forbids a State to deny to any person due process of law or the equal protection of the laws within her borders.

6. Your petitioner shows that he has been subjected to second jeopardy and he has been deprived of life and liberty without

8 due process of law, which is forbidden by the fifth amendment of the Constitution of the United States and also the fourteenth amendment of the Constitution of the United States, which forbids a State to abridge any of the fundamental rights of a citizen.

7. Your petitioner respectfully shows that he has been placed in jeopardy of his life for the second time for the very same offense. He claims that the proceedings against him in the courts of the State

of Georgia was in violation of the clause of the Federal Constitution declaring that no person shall be subjected for the same offense to be twice put in jeopardy of life or limb.

8. Petitioner says that the decision of the Supreme Court of the State of Georgia was adverse to the claim of petitioner as heretofore set out, and as in the record of the case set out. The Supreme Court of Georgia held that your petitioner was not subjected to second punishment for the same offense. That such decision of the Supreme Court was a denial to the petitioner of due process of law guaranteed by the fourteenth amendment of the Constitution of the United States and was a denial to him of a fundamental right guaranteed to him by the fifth amendment of the Constitution of the United States, which prohibits second jeopardy for the same offense, and that said court was the highest court of law or equity in said State in which a decision could be had between citizens and the State of

9 Georgia. And, of course, the final resort in said State and said judgment is final in the case.

9. Your petitioner presents with this application for writ of error a complete and certified copy of the transcript of the record in Washington Superior Court and in the Supreme Court of Georgia, which includes a transcript showing the proceedings in the Superior Court of Washington County subsequent to said final decision and judgment of the Supreme Court of Georgia. To all the record reference is hereby prayed.

Wherefore, the premises considered, the petitioner prays that the writ of error be issued out of the Supreme Court of the United States, directed to the Supreme Court of the State of Georgia, requiring the latter court to certify and send up to the former court all the record and proceedings in the case to the end that justice may be done in the premises and aforesaid judgment of the Supreme Court of Georgia and the Superior Court of Washington County may be reversed and declared null and void, and that said writ of error may be allowed by your honor, the chief justice of the Supreme Court of the State of Georgia, as is by law provided.

This the 14th day of September, 1909.

JOHN R. COOPER,
Attorney for Above-named Petitioner.

10 The foregoing petition for the allowance of writ of error in said case being considered, the same is hereby allowed and it is ordered that a writ of error issue, and that the same may be returnable according to law, bond being furnished in the sum of two hundred and fifty dollars ($250.00), approved according to law.

This the 14th day of September, 1909.

WM. H. FISH,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office Sept. 15th, 1909.

Z. D. HARRISON,
Clerk Supreme Court of Ga.

11 In the Supreme Court of the United States.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR,
vs.
STATE OF GEORGIA, DEFENDANT IN ERROR.
} Writ of error to the Supreme Court of Georgia.

UNITED STATES OF AMERICA,
State of Georgia, Washington County:

Know all men by these presents, that we, Solomon Brantley, as principal, and T. J. Simmons, jr., as surety, are held and firmly bound unto the State of Georgia and unto Hoke Smith, governor of the State of Georgia, and his successors in office, in the sum of two hundred and fifty dollars ($250.00) to be paid unto the State of Georgia and its governor, his successors and assigns, to which payment well and truly to be made we bind ourselves, each of us jointly and severally, and our and each of our successors, representatives, and assigns firmly by these presents.

Sealed with our seal and dated this 11th day of June, 1909.

Whereas the above named Solomon Brantley has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above entitled cause, rendered by the Supreme Court of the State of Georgia.

12 Now, therefore, the condition of this obligation is such that if the above named Solomon Brantley shall prosecute said writ to effect, and answer all costs and damages if he shall fail to make good his plea, then his obligation shall be void, otherwise it will remain in full force and effect.

SOLOMON BRANTLEY. [L. S.]
By JOHN R. COOPER.

By his attorney of record, John R. Cooper, for plaintiff in error.
T. J. SIMMONS, Jr. [L. S.]

Signed and sealed in my presence.
ALMA JORDAN.

STATE OF GEORGIA, *County of Bibb.* Clerk's office Superior Court.

I do hereby certify that T. J. Simmons, jr., is a good bondsman in the above stated matter. He is amply responsible for the above amount of bond, $250.00.

In witness whereof I have hereunto set my hand and affixed my seal of office, this 11th day of June, 1909.

[SEAL.]
ROBT. A. NISBET,
Clerk Superior Court of Bibb County.

This bond approved Sept. 15, 1909.

WM. H. FISH,
Chief Justice of Georgia.

Filed in office Sept. 15, 1909.

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

13 In the Supreme Court of the United States.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR, *vs.* THE STATE OF GEORGIA, DEFENDANT IN ERROR.	Writ of error to the Supreme Court of the State of Georgia from the Supreme Court of the United States.

Assignments of errors.

Afterwards, to wit, on the 15th September, 1909, at the October term for the year 1909, of the Supreme Court of the United States, at the Capitol in the city of Washington and District of Columbia, comes the said Solomon Brantley, by his attorney at law, and says that the records and proceedings in the above-entitled cause, there is manifest error in this, to wit:

1. The Supreme Court of the State of Georgia erred in its judgment in affirming the judgment of the Superior Court of Washington County.

2. The Supreme Court of Georgia erred in failing and declining to reverse the judgment of the Superior Court of Washington County upon the errors assigned in its refusal to grant the petitioner plea of former jeopardy autrefois acquit. The plea of former jeopardy was to the effect that he had been tried and acquitted of the offense of murder, and convicted of the offense of voluntary manslaughter,

14 and that the State of Georgia was barred from putting him on trial the second time for the same offense, subjecting him to second punishment and second jeopardy, which is forbidden by the Constitution and laws of the United States of America, and especially the 14th amendment of the Constitution of the United States.

3. The Supreme Court of the State of Georgia erred in affirming the court below and in holding that your petitioner had not been placed in former jeopardy under the Constitution of the United States.

4. The Supreme Court of the State of Georgia erred in holding and deciding that:

"The greater number of authorities take the view that a verdict of manslaughter involves an acquittal of murder, and that a new trial granted on motion of the accused after conviction of the lesser offense is not to be considered as a new trial for the greater offense of which he was acquitted, but must be confined to a retrial of the offense of which he was convicted, as the accused should not be deemed to have waived his right in so far as he was acquitted."

The error in this decision is that the judgment of the court below should have been reversed. If they believed that the greater number of authorities took the view that a verdict of manslaughter involves an acquittal of murder.

5. The Supreme Court of the State of Georgia erred in holding and deciding that:

"If the question be argued from the standpoint of former jeopardy, rather than that of former acquittal, and the two be not the
15 same within the meaning of the Constitution, as to the thing inhibited, the result must be the same. A court can grant a new trial to a person convicted of crime and retry him, or it can not. On the first trial the accused has been placed in jeopardy as to the offense of which he was actually convicted, quite as much as in respect to the offense of murder. If, under the Constitution, he could never be put in jeopardy again for any offense involved in the former trial, and could not waive such guaranty, and if he moved for and obtained a new trial, he could never be tried again at all. The grant of a new trial would be equivalent to a discharge. It is generally conceded that he could waive the constitutional protection against putting him twice in jeopardy, by asking for a new trial and obtaining it, at least as to the offense for which he was convicted. (United States v. Ball, 163 U. S., 662.) If so, then whether the waiver merely has the effect of allowing a new trial as to the lesser offense, or an indictment as if there had been no previous trial, is a matter of degree and of construction of the extent of the waiver which the law declares the accused makes in asking for a new trial."

The error in this decision is that the Supreme Court of the State of Georgia held that the prisoner could waive his constitutional
16 right by making a motion for a new trial and appealing his case to the highest court in the State. The defendant contends that he can not waive his constitutional right guaranteed to him by the Federal Constitution and the 14th amendment, forbidding a State to take away from a citizen the fundamental right of being free from second jeopardy. Defendant contends that the 14th amendment forbids a State to abridge the right of a citizen and especially to subject him to being placed in jeopardy for the same offense the second time, and subjecting him to second punishment for the same offense. There is nothing better settled in America and in England than that a citizen can not be subjected to second punishment for the same offense.

6. Because the Supreme Court of the State of Georgia committed error in holding and deciding that:

"In those States where statutes have been passed declaring that, if on motion of the accused a new trial is granted, it shall be a complete new trial, we have found no instance in which such a statute has not been upheld. Enactments of that character are in substance merely legislative declarations or provisions that when the accused moves for and obtains a new trial he waives any right to set up former jeopardy to prevent a complete new trial, or estops himself from so doing. If, therefore, the declaration that the accused
17 can not be put on trial for murder after he has caused a conviction of manslaughter to be set aside and a new trial to be

granted to him is based on constitutional grounds, such legislative acts could not change the result. If the position be not based upon any strict constitutional inhibition against retrying the accused for murder, after the grant of the new trial, but upon a question of what is the extent of the waiver which the accused makes when he applies for and obtains a new trial, we need not repeat what has already been said as to the inconsistency in permitting a person convicted of a crime to ask that the verdict of guilty of manslaughter be set aside and a new trial be granted to him, and that he be allowed to destroy the verdict in so far as it affirmatively affects him injuriously, but retain the benefit of all implications arising in his favor therefrom."

The error in this decision is in not holding that the Federal Constitution declaring that no person shall be subjected to second punishment for the same offense, or be placed in jeopardy of life or limb the second time for the same offense, the State constitution to the contrary notwithstanding. Defendant contends immunity from second jeopardy is protected against hostile state legislations, not only by that clause of the 14th amendment declaring that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, but by the
18 clause in the same amendment "Nor shall any State deprive any person of life, liberty, or property without due process of law." Defendant contends that the right to immunity from second jeopardy can not be taken away by any State consistently with the clause of the 14th amendment that relates to the deprivation by a State of life or liberty, without due process of law.

7. The Supreme Court of Georgia committed error in holding and deciding that:

"It was contended that to place the defendant on trial for murder, after he had been convicted of manslaughter, and had sought and obtained a new trial through a reversal granted by the Court of Appeals, would be violative of the clause of the 5th amendment of the Constitution of the United States in regard to former jeopardy. Such a contention is without merit. It is now well settled that the 5th amendment to the Constitution of the United States was intended to operate upon the Federal Government, and not to limit the powers of the State, in respect to their own people. (Barron v. Mayor, etc., of Baltimore, 7 Peters, 242; Twitchell v. Commonwealth, 7 Wall., 321; Spies v. Illinois, 123 U. S., 131, 166.)"

The error in this decision is in holding that the 5th amendment to the Constitution of the United States in regard to former jeopardy was intended to operate upon the Federal Government, and
19 not to limit the powers of the State in respect to their own people. The 14th amendment to the Constitution of the United States forbids a State from taking away a fundamental right guaranteed to the citizens by the 5th amendment. The Supreme Court of Georgia should have reversed this case and given the defendant a new trial because he had been subjected to second punishment and second jeopardy for the same offense, which is forbidden

by the 5th amendment of the American Constitution. Defendant contends that the 14th amendment was adopted to protect the citizens in each State to all his fundamental rights guaranteed to him under the laws and Constitution of the United States; that the Federal Constitution operates as a restraint upon the States in the execution of their criminal laws and forbids the State of depriving a citizen of his life, liberty, or property without due process of law.

8. The Supreme Court of the State of Georgia committed error in holding and deciding that:

"It was also contended that to again place the accused on trial for murder would be violative of the provisions of the 14th amendment of the Constitution of the United States, in that he would be thereby deprived of due process of law and the equal protection of the laws. We think it requires no argument to show that those provisions have
20 no application to the case. That amendment does not deal with the regulations established by state laws and state constitutions under which a person convicted of crime may move for a new trial or carry his case to a review court, or the extent of the new trial which will be granted to him if he elects of his own motion to invoke the aid of such statutory or constitutional provisions, provided only they furnish due process of law, and do not deny the equal protection of the laws. There is nothing in the Georgia constitution or laws having any such effect as to the accused. He has been accorded a trial before a court of competent jurisdiction. No claim is made that he was not duly and regularly tried in accordance with the forms of law, nor is any other error assigned except on the point hereinbefore discussed."

The error in this decision is in the Supreme Court holding that the 14th amendment does not deal with the regulations established by state laws and state constitutions under which a person convicted of crime may move for a new trial, and in holding that the citizens of a State is not entitled to the guaranty of national citizenship in all his rights, and immunities, and privileges under the 14th amendment of the Constitution of the United States.

9. The Supreme Court of the State of Georgia committed in holding and deciding that:

"The 14th amendment did not radically change the whole
21 theory of the relations of the state and federal governments to each other, and of both governments to the people. In re Kemlar (136 U. S., 436, 448); Hurtado v. People of California (110 U. S., 516). In Leeper v. Texas (139 U. S., 462), it was said: "By the 14th amendment the powers of States in dealing with crime within their borders are not limited, except that no State can deprive particular persons, or classes of persons, of equal and impartial justice under the law; that law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied; and that due process is so secured by laws operating on all alike; and not subjecting the individual to the arbitrary exercise of the powers of government

unstrained by the established principles of private right and distributive justice."

The error in this decision is the failure of the Supreme Court of the State of Georgia to hold that the prisoner was deprived of his life and liberty without due process of law and without the equal protection of the laws guaranteed by the 14th amendment of the Constitution of the United States. And in holding that the 14th amendment does not give a citizen any more rights in a State than he had before the civil war, or before the 14th amendment was framed by the people of the United States. And in holding that the
22 State of Georgia has the power to arbitrarily place a citizen on trial the second time for the same offense, which is forbidden by the Federal Constitution. And in not holding that this negro, Solomon Brantley, who was made a citizen of the United States after the civil war by the 14th amendment, was not entitled to national citizenship, and not entitled to the protection from second jeopardy guaranteed to him by the Constitution, and especially the 14th amendment thereto, of the United States.

Wherefore the plaintiff in error prays that the judgment of the Superior Court of Washington County, as affirmed by the Supreme Court of the State of Georgia in said case be reversed, annulled, and made to hold for nothing, and that the defendant may be restored to all things which he has lost by reason of said judgment, and that such other judgment and direction be had from this honorable court as may be necessary and proper in the premises.

This the 11 day of June, 1909.

JOHN RANDOLPH COOPER,
Counsel for Solomon Brantley, Plaintiff in Error.

Post office address, Macon, Ga.

Filed in office Sept. 15, 1909.

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

22a In the Supreme Court of the United States of America.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR, *vs.* STATE OF GEORGIA, DEFENDANT IN ERROR.	October term, 1909. Writ of error to the Supreme Court of Georgia, from the Supreme Court of the United States.

Assignment of errors, amendment thereto.

Now comes Solomon Brantley, the plaintiff in error in the above-stated case, and moves to amend his assignment of errors heretofore filed on the following grounds:

1. Because the Supreme Court of Georgia committed error in deciding that the plaintiff in error was not deprived of benefit of counsel in the court below in the trial of his case.

2. The Supreme Court of Georgia erred in holding that the trial court committed no error in forcing the trial of the case without giving time for defendant's counsel to get physically able to argue his case to the jury.

3. Because the Supreme Court of Georgia erred in affirming the court below and in holding that the prisoner had not been deprived of the benefit of counsel according to the laws of the United States, and especially the fifth amendment of the Constitution of the United States.

4. Because the Supreme Court of Georgia erred in not holding that plaintiff in error had been denied a fair trial and had been denied the aid of counsel in violation of the sixth amendment to the Federal Constitution. And the said defendant was also denied the
22b rights secured to him under the fourteenth amendment of the Federal Constitution, especially the equal protection clause of the fourteenth amendment, which forbids a State to deprive one of its citizens of his life without the equal protection of the laws.

Respectfully submitted.

JOHN R. COOPER,
Counsel for Plaintiff in Error.

23 STATE OF GEORGIA, *Washington County.*

Be it remembered that there came on for trial at the regular March term, 1909, of Washington Superior Court, a certain cause then and there pending between the State of Georgia and Solomon Brantley, who is charged with the offense of murder, the Honorable B. T. Rawlings, judge of said court then and there presiding. Before arraignment and plea pleaded to the said bill of indictment the defendant, Solomon Brantley, entered his special plea in bar, it being a plea of former jeopardy autre fois acquit. The plea of former jeopardy alleged that the defendant, Solomon Brantley, had been tried on the very same indictment for the crime of murder at the previous September term of Washington Superior Court, 1908, and fully acquitted of the charge of murder when the jury reduced the case from murder to voluntary manslaughter, from which he appealed his case to the Court of Appeals of Georgia and obtained a reversal. So he claimed the State was barred from arraigning him for the crime of murder, and from putting him on trial for the second time for the same offense, to wit, murder, from which he had been fully acquitted by a jury of the country, but that he could only be arraigned for the offense of voluntary manslaughter. All of which grounds are set forth in this special plea in bar. To this plea the Solicitor-General filed a demurrer, and after hearing argument on the same the Hon. B. T. Rawlings, judge of said court, as aforesaid,
24 then and there, on the 4th day of March, 1909, sustained the demurrer to the special plea in bar, and overruled and refused the plea of former jeopardy on all the grounds thereof; to which ruling of the court the defendant then and there excepted, and now

excepts, and assigns the ruling of the court as error, and says that the court committed error in sustaining the demurrer, and says:

1. That the court committed error in sustaining the demurrer to the plea.

2. The defendant alleges that the court erred in overruling and refusing the special plea in bar of former jeopardy, and not sustaining the same, and in not discharging the prisoner, for the crime of murder.

3. The defendant excepts to the ruling of the court and says that the court erred in overruling and refusing the special plea in bar on all the grounds in special plea. Defendant then and there excepted and now excepts and assigns the same as error.

Now comes the plaintiff in error, Solomon Brantley, and specifies and a material part of the record, to be sent up in transcript of the record to the present term of the Supreme Court of Georgia, the following, to wit:

1. The bill of indictment against Solomon Brantley, with all orders thereon.

25 2. The brief of the evidence agreed to and approved by the court, had on the former trial of this case, at the September term, 1908.

3. The special plea of former jeopardy.

4. The order overruling the special plea of former jeopardy and sustaining the demurrer.

Now comes Solomon Brantley, the plaintiff in error in this case, and tenders this his bill of exceptions within twenty days from the ruling of the court, and within the time allowed by law, and asks that the same may be signed, certified, and allowed, according to the form of the statute in such cases made and provided, that the errors alleged to have been committed may be reviewed and corrected, and the defendant will ever pray.

Respectfully submitted.

JOHN R. COOPER,
Atty. for Plaintiff in Error, Solomon Brantley.

P. O. address, Macon, Georgia.

26 *Certificate of the judge.*

I do certify that the foregoing bill of exceptions is true and specifies all of the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the Superior Court of Washington County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This March 13th, 1909.

B. T. RAWLINGS,
Judge S. C. M. C.

Clerk's certificate.

CLERK'S OFFICE, SUPERIOR COURT OF WASHINGTON CO.,
Sandersville, Ga., March 26, 1909.

I hereby certify that the foregoing is the true original bill of exceptions filed in this office in the case therein stated, and that a copy thereof has been made and is now on file in this office.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[SEAL.] MACK SESSIONS, *Clerk.*

27 Due and legal service of the within bill of exceptions acknowledged; copy and all other and further notice and service waived.

This March 20th, 1909.

ALFRED HERRINGTON,
Atty. for State.

P. O., Swainsboro, Ga.

(Endorsed:) No. ———. Term 1909. Supreme Court of Georgia. Solomon Brantley, plaintiff in error, v. The State, defendant in error. Original bill of exception. Filed in office March 26th, 1909. Mack Sessions, Clerk S. C. W. C. John R. Cooper, atty. for plaintiff in error.

28 (Endorsed:) No. 7 criminal docket, March term, 1909. Supreme Court of Georgia. Brantley v. The State. Bill of exceptions. Filed in office March 27, 1909. W. E. Talley, D. C. S. C. Ga.

29 INDEX.

1. The bill of indictment.
2. The brief of the evidence approved.
3. The special plea of former jeopardy.
4. The order overruling plea and sustaining demurrer.
5. Pauper affidavit.

30 GEORGIA, *Washington County.*

In the Superior Court of said county.

The grand jurors selected, chosen, and sworn for the county of Washington, to wit:

1. C. B. Chapman, foreman.
2. B. R. Tanner.
3. R. M. Layton.
4. M. R. Tucker.
5. L. A. Gladin.
6. W. A. Woods.
7. E. J. Smith.
8. J. R. Smith.
9. J. T. Amerson.
10. H. S. Sessions.
11. H. M. King.
12. G. C. Walker.
13. J. E. Dukes.
14. W. C. Murphey.
15. J. R. Mills.
16. L. W. Webster.
17. R. L. Stephens.
18. J. E. Moye.
19. B. F. Boatright.
20. W. A. Bell.
21. J. P. Webster.
22. E. H. Lawson.
23. D. G. Moye.

In the name and behalf of the citizens of Georgia charge and accuse Solomon Brantley, of the county and State aforesaid, with the offense of murder. For that the said Solomon Brantley, on the 5th day of May, in the year of our Lord nineteen hundred and six, in the county aforesaid, with force and arms, one Tom Hannah, in the peace of God and said State then and there being, then and there unlawfully, feloniously, wilfully, and of his malice aforethought, did kill and murder, by shooting the said Tom Hannah with a certain pistol, which the said Solomon Brantley then and
31 there held, and giving to the said Tom Hannah then and there a mortal wound, of which mortal wound the said Tom Hannah died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Solomon Brantley him the said Tom Hannah in manner and form aforesaid, unlawfully, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the laws of said State, the good order, peace, and dignity thereof.

ALFRED HERRINGTON, *Sol-Gen.*
JOE HANNAH, *Prosecutor.*

WASHINGTON SUPERIOR COURT, *Sept. Term, 1908.*

The defendant waives being formally arraigned and pleads not guilty.

ALFRED HERRINGTON, *Sol.-Gen.*

Copy of the bill of indictment and list of witnesses sworn to before the grand jury, and formal arraignment waived.

JOHN R. COOPER,
Defendant's Attorney.

Washington Superior Court, Sept. term 1908.

THE STATE
v.
SOLOMON BRANTLEY. } Murder.

Appearances.

For the State, Sol.-Gen. Herrington and M. L. Gross.
For the defendant, John R. Cooper.

32 *Brief of the evidence.*

M. E. BRIDGES, sworn for the State, testified as follows:

Direct examination by Mr. GROSS:

I know Solomon Brantley. There he is over there [pointing to the defendant]. I saw him on May 5, 1906. I knew Tom Hannah in his lifetime. I also saw him on that occasion. He is now dead. He was

killed by Solomon Brantley on that day. Solomon Brantley shot him. I was present at the time he was killed; I saw who killed him; I saw Solomon Brantley kill him. As to what Tom Hannah was doing to him at the time, well, when I noticed him the shooting took place; the first thing that I saw the shooting took place. I did not see him before the shooting. I was about fifteen steps from them I reckon at the time of the shooting. Tom Hannah was not doing anything to Solomon Brantley at the time. As to what Tom Hannah was doing at the time that Solomon Brantley shot him, well, I didn't notice until after the first shot. I saw it seemed like, Tom Hannah had his face towards Sol the first shot. I saw the light of the pistol fire and he turned from him and went from him, kinder bent over this way and Sol he just kept firing that way, lent over and kept shooting him. At the time that the shooting began I think Tom Hannah was facing Solomon Brantley, but he was not facing him all of the time during the shooting. He was facing him at the first shot
33 I saw, and it seemed like he sorter had his side to him when he made the first shot and after the first shot had fired Solomon Brantley then proceeded right at Tom Hannah and Tom Hannah he went bent over kind of this way, getting away. He was not going towards Solomon Brantley, he was going the other way and going down opposite him. While he was going away Solomon Brantley fired upon him. I think it was about four shots, maybe five. At the time the last shot was fired, the best I could guess, Tom Hannah was on his all fours when Solomon Brantley made the last shot. I could not say where that ball hit him; I did not make any examination of the dead man after he was shot. I never did make any examination of him at all. That shooting occurred at Harrison, Georgia, in Washington County. I did not make any examination of the body after it had fallen.

Cross-examination by Mr. COOPER:

As to whether or not I saw the first part of the difficulty, the shooting was all I saw. I did not see the first part of it; if there was any more to it I did not notice it. I don't know what occurred before that. I did not hear any words passed between them. I don't know what the shooting was about. The shooting is what first attracted my attention. I think I was about 15 steps from the shooting at the time that it occurred. I was paying no attention to the
34 negroes before that time. I was not expecting a difficulty and the first I knew of it I heard a pistol shot fired and I turned and looked at them, in fact I was mighty near looking that way at the time it fired; I was looking up the road and they were a little to my right. Right at the moment that the pistol I was looking at *at* those two negroes. Before the firing of the pistol was not, but right at the moment of the firing I was. I was not paying attention especially to the negroes. I could not say whether the dead man started to draw a weapon or threw his hand to his hip pocket or not,

I could not tell as to that. I do not know how many shots were fired; there were about four, maybe five. I could not say how many were fired; I did not count them. I know there was over one, and I think there was four or five. I am not guessing at that. There were, perhaps, five shots fired.

I know that this man's life is at stake, but I am not guessing at the number of shots that were fired. [The witness at the request of counsel indicates about the way the shots were fired.] This shooting was done in 1906. It is not true that I have forgotten all about it since that time. I do not pretend to tell this jury exactly how many shots were fired and be positive about it. I have got no feeling in this matter, not a bit in the world. I never did hear of the dead man's character, or what sort of character he had for violence. I never did hear that the dead man had killed a man. I did not know that, and never heard it. I knew the dead man; I was a friend to him. I am not prosecuting this case, I am not interesting myself against this defendant, I do not know who saw this killing besides myself. I could not say how many were there. I think it was a little after sunset in the evening when this killing occurred; it was not dark, it was a very bright, light evening. It was clear, not cloudy. I was about 15 steps away from them I think. There was no other white man about there very near, as I noticed. I don't know whether any other white man saw it or not, I have heard others say that they saw it but I do not know. I think there are some of them here that say they saw it. I could not say whether any negroes saw it or not; there was as many as three or four negroes around there; I suppose they saw it. I do not know whether anybody saw the whole thing from beginning to end, I could not say. I took one of the negroes there to be Hamp Kennedy. I think he is here. I don't know whether he saw it all or not, he was near by. I don't know whether he claims to have seen it all or not. I did not say that he claimed to see it all; he claims to have seen a part of it or all of it, I don't know which. I do not know anybody that did see it all, I couldn't say that I do. I saw the killing. I saw the pistol fired, but I do not know anything about what led up to the killing.

State rests.

Statement of the defendant, Solomon Brantley.

Tom Hannah threatened killing me; he said he had killed one son of a bitch, and said he would hang about me, and so he had threatened killing me, to myself and Mr. Irwin Brantley, several times; and so I was afraid of him, of course, and I never bothered him any way. Every chance I could get I tried to keep out of his way, and my father, Mitchell Brantley, he sent me off to Dublin one time. I went down there and stayed a while, and I thought everything was all right, and come back home to Harrison, and after that he sent me

to Soperton, Georgia, and I worked down there a while, feeling and thinking that everything was all right, I come back home again, and everything was not all right, but still I didn't know it, and one night in May, I don't remember the night, I owed Hamp Kennedy one twenty-five cents and I was working with Mr. Dyer at that time and I didn't have nothing further than one dollar, and I give Hamp Kennedy a dollar to change to get his money out of it, and about that time Tom Hannah walked up and asked Hamp Kennedy what did he want changed, and Hamp says, "I want the dollar changed," and he says, "I can change any son of a bitch's money on earth," and asked Hamp did he mind his changing it. I don't know what Hamp said, but he did give him the dollar, and after he give him
37 the dollar he changed it, and said: "If any son of a bitch didn't like it to tell him, just to sheep it out," and when he did then he throwed his hand on his hip pocket and started towards me, and his brother Joe was on one side and he was facing me, and then after that he throwed his hand on his right hip pocket, and he started towards me, and I thought he was going to kill me, and I had to defend myself. That is all I want to say. I can state what sort of a man he was; he was a mulatto man, and his color was mulatto, and then he claimed to be a bad man.

By Mr. COOPER.

Q. Had you ever heard anything he had done, and he said himself that he had killed one son of a bitch, and he was going to hang for me, and told me that out his own mouth.

Defendant closes.

W. R. SHEPPARD, sworn for the State, testified as follows:

Direct examination by Mr. HERRINGTON:

I was present at the time of this shooting. I did not hear Tom Hannah making any threats against this man that I know of directly to him. There was another fellow in between them having some money changed from one to the other. There was a man between Hannah, the dead man, and the prisoner now on trial. I did not take it that the dead man said anything at all to the prisoner. I did not so consider it. The shooting began, and he shot him about as much as twice, and then he turned to get away, and he shot
38 then once, if no more, as he turned, and then he shot him twice as he was going off. I did not see the dead man draw any pistol at all. I was close enough to have seen it if he had.

Cross-examination by Mr. COOPER:

I do not know whether I was down there at the store when this man Hannah passed Brantley just before the killing or not. I did not hear anything that was said between them. I did not hear any threats made by the dead man. I did not hear the dead man say that he was going to kill Brantley, that he was a damned son of a bitch. I heard the dead man, Tom Hannah, say something

about Brantley and against Brantley about a year before that time, near about a year before that. It was on Christmas before this thing happened. He got mad with Brantley about that time, and he was threatening killing him about that time. The language he used was this: "If I had got to him a minute or two ago I would have killed him." He was mad with him at the time. If this man Hannah had been after Brantley often I do not know anything about it. I heard no other threats made at any other time made by the deceased against the defendant. I knew the deceased Hannah personally when I met him. If his character for violence was bad I did
39 not know it. I never heard of his killing any man. It is not a fact that he killed a man that I know of. I have never heard of it. I live in Washington County. I did not live at Harrison at that time. I lived a mile and a half east of Harrison station at that time. I saw no trouble between those negroes that afternoon. I did not hear Hannah say that he wanted to change his money. I did not hear Hannah say "that he would change any damned son of a bitch's money on earth." I did not hear him use those words exactly. Solomon Brantley walked up there and handed Hamp Kennedy some money, I don't know how much, and told him to get his money changed and he would pay him what he owed him, said that he would pay him some money that he owed him if he could get it changed, and Hamp Kennedy made some movement to get it changed and handed it to Tom Hannah that way, and Tom Hannah says "I can change your damned money," and then he taken the money and changed it, and in changing it he dropped some down on the ground and he says, "Pick up my money, you damned son of a bitch." He was talking to Hamp Kennedy at the time. That was the man that was having the money changed, and I took it that he was talking to him. I don't look at it that he was talking to Brantley. If he was talking to Brantley I didn't see it that way. Hamp Kennedy was the man that was having the money changed. The dead man, Tom Hannah, did not call Brantley a son of a
40 bitch in my presence. Hannah did use the word son of a bitch while I was listening at him, but he did it to that man that was having the money changed. This negro Hamp Kennedy that I am talking about now is out here in the court house, I think. I do not mean to tell the jury positively that the difficulty was between this man Hannah and Hamp Kennedy; Kennedy was the man that was having the money changed. As to who the difficulty was between I can not say; they were the ones that were doing the talking until the shooting occurred. As to whether or not the difficulty was between Solomon Brantley and the dead negro I could not say. He was talking to Hamp Kennedy; it looked like from the words that he was speaking that Hamp Kennedy was the one that he was mad with. That is the one that he was doing his cursing to. I could not swear that he was cursing Brantley. I do not know which one he intended the words at. This man Kennedy did not shoot at him; he didn't have any fuss with the dead negro; there was no trouble between the

dead negro and Hamp Kennedy, not there, except those words. It turned out afterwards that the difficulty was between the dead negro and the prisoner at the bar. That is the way it turned out. I could not say that Tom Hannah was using the damned son of a bitch to Brantley. I was somewhere about twelve or fourteen feet from them at the time. When Tom Hannah used the words, "You damned son of a bitch," he didn't call any name with it, and I don't know who he intended the words at. I do not know who else
41 was present there and heard what I heard, and saw what I saw. Hamp Kennedy was there and he saw it all. He is a negro. I don't recollect seeing Mr. Bridges there. I don't know whether Mr. Bridges was there or not. I am acquainted with Mr. Bridges; I don't recollect right at this time who I saw there; I was noticing them. I could not say that I saw everything that occurred between the negroes. I was paying particular attention to the negroes, although I was not interest in their trouble. I was just standing there hearing their talk. I did not stop especially for that. I was there when it started. I was not in the fuss myself; I was just there in Harrison at the time. I don't know who was with me at the time. The killing occurred in the afternoon, sometime between sunset and dark. It was getting sorter dusk. I don't recollect seeing Mr. Bridges. I saw this man Hannah when he threw his hand back to his hip pocket. I do not know what he put his hand back there for. It is true that he threw his hand back to his hip pocket, and then the pistol fired from Brantley. I did not see anything else the dead man did. I never noticed anything that Kennedy did after the shooting. I do not recollect seeing the prisoner Brantley just before the killing. I saw him just after the killing, going running off down the street, I reckon nearly seventy-five yards. I had not moved at the time. I was still standing where I was when
42 the shooting occurred. I couldn't tell you whether it was five or six pistol shots fired; there were as many as five; I don't know whether there was as many as six. I know there was as many as five. I don't know how many pistols were there. There was one man doing the shooting, and only one. I don't know whether he had a six shooter or a five shooter. I can't exactly recollect how long I have been knowing Solomon Brantley. I have been knowing Solomon a right smart while; I don't know how many years. I have got nothing whatever against him. I have never had any trouble with him. As far as I know and as far as I have heard, his character in that community for peaceableness is good. I never heard anything against him until this killing occurred. I have been living near him for several years. I don't know how many years. I couldn't say whether it was as many as ten years or not. I don't recollect how long Solomon has been around Harrison. I lived right where I have been living all of my life, close around Harrison, but not right at the same house. I don't recollect how long Solomon has been in there. I did not hear Hannah threaten Brantley's life at any other time. I heard him say on one occasion, "If I could

have got to him right then I would have killed him." That occurred Christmas before the killing of Hannah. I was close enough to hear the language used by Hannah on this occasion. I heard
call somebody a son of a bitch, after he changed the money.
43 I don't know who he was calling a son of a bitch, whether it was him or Hamp, but I know that he used the word son of a bitch. Then it was that Hannah threw his hand back to his hip pocket and the pistol fired and Hannah dropped.

Redirect examination by Mr. HERRINGTON:

At the time words were used that I told you about, when Hannah said that if he could have got to Brantley he would have killed him; Hannah was mad and cutting up and he says if I had got to him I would have killed him. That was about Christmas time, before that killing occurred. Tom had got mad with Solomon at that time. I could not say whether Solomon was mad with him or not. They were not in a fuss right at that time. They were not quarrelling face to face with one another. Solomon, when Tom said this, was up at the church. Tom had just come from the church and was rearing about there on the streets, walking around on the streets when he made that remark. If they had a fuss up at the church I don't know it personally. Tom said they had had a fuss, but I don't know anything about it. He and this boy Solomon had had a fuss from what they said. I was not there at the time. He never did get to him after
that that I know of. Of course, they were in town together;
44 they lived in town together; they passed each other about there in town, I guess, and lived there in town something like a year, or nearly a year, after that occurred before the shooting took place. I don't know where Hannah got his pocketbook from when he changed this money—he had it in his hand. I did not see the pocketbook enough to know which pocket he got it out of. When he says, "I can change any son of a bitch's money" I did not see him put his hand back here. I didn't see where he put his hand to get the money from. I couldn't say whether he had his pocketbook in the hand as he went to put it behind him or not. I did not see what was in his hand as he went to put it behind him, at the time that he got shot. It seemed like, the best I can recollect, that it was his right hand that he put behind him. His pocketbook he had in both hands, or rather he did when I noticed it, about his dropping the money. I think Hamp Kennedy is the man that picked up the money. He was addressing his remarks to Hamp Kennedy at the time. Hamp Kennedy gave him the money when he picked it up. When Hamp picked up the money and gave it back to Tom, Solomon said something to Tom. I don't know exactly the words. Something about cracking off at him, and Tom stuck his hand sorter back that way behind him and Solomon shot him. If Tom had a pistol I didn't see one. He didn't
draw any pistol. There is the man that picked it up at Tom,
45 according to the way they started to changing the money. Tom says, "Pick up the money and give it to him, a damned son of

a bitch." He was talking to Hamp Kennedy, I think. Hamp was the man that give him the money to change, and he says, "Pick it up and give me my money, you damned black son of a bitch." Hamp Kennedy then picked up the money. Then Solomon says to Tom: "I told you not to be cracking off on me, Tom." Then Tom stuck his hand back under his coat. I don't know whether it was his hand with a pocketbook in it or not. I don't know whether he had anything in his hand at all or not. I know that he had his pocketbook in both hands, and this boy shot him just after that. Solomon told Tom, he says, "Tom, I told you not to be cracking off on me," and then Tom stuck his hand back there and then Solomon shot him. That is the way the thing occurred. After Tom fell the only words that I heard him use was, he says, "The damned son of a bitch has killed me."

Recross-examination by Mr. COOPER:

The words that Tom used before he got shot were these, in the way I am telling you; he says, "Pick up my money, you damned black son of a bitch." He used the words "damned black son of a bitch" when he threw his hand back to his pocket.

46 HAMP KENNEDY, sworn for the State, testified as follows:

Direct examination by Mr. HERRINGTON:

At the time that Solomon Brantley shot Tom Hannah I heard the report from the pistol, but I did not see the pistol; it was near dark. I was there at the time. I reckon I am the same witness that testified about this case in the lower court. My name is Hamp Kennedy. I testified in this case before, I reckon. Mr. Wood asked me what I knowed about it. I was present when the shooting took place. Tom asked me, he says, "Whose money is that?" Tom walked up there and Solomon owed me a quarter; Solomon said to me, "Old boy, I don't mean to beat you out of your money," talking to me, and Tom he walked up there and says, "Good evening," and I says, "Good evening;" he says, "You haven't got any secrets have you?" and I says "No," and he spoke to another feller by the name of Earnest Taylor, and wanted him to go to Idylwild with him next Saturday. Then he looked around and asked me what I had; Tom Hannah looked around and says, "What is that you got?" and I says, "It is a dollar," and he says, "Let me change it," and I says, "It ain't mine; it is with Solomon about your changing it," and he says "Let me change the damned son of a bitch's money," and he says, "A heap of these damned son of bitches around here that don't treat me right has got to treat me right, and if they don't like it they have got to
47 cut it out," and Tom Hannah then he laughed, and when he changed the money he give me a half dollar and two quarters, and he says, "I dropped a nickel," and he says, "Get that nickel down there, you God damned black son of a bitch." I don't know who he was talking to. I didn't pick up the money myself. I don't know who picked it up; Mr. Mitchell Brantley says he picked it up the next

morning. Nobody picked it up then. After he changed the money he went to put the money back this way—he had on his coat and it looked like to me that he throwed his hand in hip pocket, or put it in his fob pocket, I don't know which; he was standing this way, and I don't know whether he was aiming to put it in his pocket this way or this way [indicating]. He didn't have anything in his hand that I seed, except some money. I don't know where he was putting the money; he done this way at the time he started to put the money up. I don't know whether there was a pocket here [indicating] or not; I didn't see it. I don't know whether he was reaching back under his coat to put the money in his pocket or not; I don't know what he was doing. I don't know whether he had a pistol of not; if he had one I didn't see it. I seed him after they carried him to the drug store, and he didn't have any pistol then. They didn't find any pistol on him at all that I know of. If he had a pistol I didn't see it. Neither did he have a pocket knife. I saw the man and he did not
48 have a pistol; if he did I didn't see him with one. I did not go up to him after he fell. John Brockington and Tom Hawkins were the ones who went to him when he fell. I don't know where they are now; they are home, I reckon. When he fell I reckon I was as far from him as from here to that bench yonder. If they had taken a pistol away from him I guess I could have seen it if I had stayed there, but I didn't stay there. I walked on off as he fell. I turned around before he fell. I had to go by them, Colonel, on my way home. When he commenced putting the money in his pocket, it was right then that Brantley fired on him. I was standing like this; might have been Solomon Brantley here; I was standing next to Solomon, and Tom he was standing sorter in front of him; that is, in front of Solomon. I was not standing in between them. All of us was leaned up against the brick wall. I don't know whether Tom was doing anything at all towards trying to hurt Solomon when he fired on him or not. I don't know what he meant by running his hand in his pocket. I didn't see him trying to hurt him with anything at all.

Crossexamination by Mr. COOPER:

I did see him throw his hand back to his hip pocket, this way, before the pistol fired. He throwed his hand back, as I told you, this way. And then it was that Brantley fired on him. If there was any trouble between me and the dead negro Hannah, I
49 didn't know it. The fuss was between Brantley and Hannah. I have been knowing Brantley about seven years, as near as I can get at it. His character for peaceableness has always been good, everywhere I knowed of. I have never heard of him getting in any trouble before this. He is peaceable among the colored people, so far as I know. I didn't know anything about Hannah; he hadn't been there very long. Some people spoke well of him and some did not. I didn't know anything about him. A part of his character was bad and a part was good. Some of them say that he was a fuss raiser, but I don't know anything about that. I never

did hear of Tom killing a man. The negroes around there acted like they were afraid of him. Solomon acted like he was skeered of him, because when he seed him coming he would get off the street. I heard Solomon say that he never did like to have any fuss with him. That statement was made in Harrison. He said that directly after Christmas. Me and him was going down the street talking and he says, "I don't want to meet Tom; let's go another way." I never did hear Hannah threaten this man's life. I was not there when the difficulty took place before this time between these two men, but I heard of it. I was not with Hannah that afternoon when he got killed; I was not with him that evening at all until he walked up there. When Hannah walked up there, Brantley was standing there at the time, and he was talking to Earnest
50 Taylor, and seemed to be peaceable at the time. He didn't seem like he was mad with anybody. He was not raising a row with me or anybody else; he was standing there talking with a man by the name of Taylor, and this dead man Hannah, walked up. Tom just walked up there and says, "Good evening; is you all talking any secrets?" and I told him no, and he says, "Earnest, I want you to go to Idulwild next Saturday to pick the guitar," and he says "Alright," and then he looked around and laughed, and he says, "Hamp, what is that you got?" and I says, "It is a dollar," and then he commence cursing, and he says, "These damned sons of bitches don't like me, but they have got to treat me right." Then he says, "Let me change the God damned son of a bitch's money," and Brantley give it to me and told me to give it to him; he give it to me, then Hannah replied, he says, "You let me change the God damned son of a bitch's money." I reckon he must have been talking about Brantley. It was Brantley's money, and Brantley then said nothing. Then Hannah says, "Let me change it," I told you what he said, and he took out a half a dollar and two quarters and give them to me, and then I give him the dollar and he said he dropped a nickel, and he says, "Pick up that nickel there, you God damned black son of a bitch." I reckon he was talking to Brantley. I don't know who else he was talking to; and after he said that then the shooting occurred. Brantley says "Tom,
51 you ain't got any right to be cracking at me that way, and he done that way, and Tom says, "You damned son of a bitch, I ain't cracked at you," and jumped up this way, and then Brantley shot him. Hannah used the word, son of a bitch, as he threw his hand to his hip pocket. If he had a pistol I didn't see it. I stated that Hannah said something about cutting it out, the words he used were these: I said that he said that if he didn't like it, you will have to cut it out. Hannah is the man that said that. He didn't say anything about cutting it out with a knife. This man Brantley was not bothering Brantley at that time. He never did bother him that I know of. I do not know who started the difficulty. I could not tell who started the fuss first. I can tell you how it was and let

you all decide that. If Brantley started any fuss with anybody, I didn't see it. It seemed like to me that Hannah was mad with that man when he walked up there; from the way that he acted he must have been mad with him or with me, one. He acted in a manner when he came up there.

Redirect examination by Mr. HERRINGTON:

I remember having a talk with Mr. Gross about three or four o'clock this afternoon about this case (counsel for the states in open court that they have been entrapped by the witness). I can not remember telling Mr. Gross that Hannah never said a
52 word and that there was nothing done between Hannah and Brantley, and all that was said was between me and Hannah. I don't remember telling him there was nothing said between Hannah and Brantley. I don't remember telling him that there was no words passed between them. I remember the conversation between me and Mr. Gross. Mr. Gross asked me about the case and I told him some things I thought it was proper for me to tell, and the others I thought the proper place for me was to get on the stand and for him to ask me about it. As I told you a while ago, this man didn't call Brantley's name just before the shooting took place. I don't think I told Mr. Gross that Hannah didn't say anything to Brantley, but all that was said on his part was towards me. I didn't know whether he was talking to Brantley or to me, and I think I told Mr. Gross that, about two or three hours ago. I can't remember three hours as well as I can remember three years. I told Mr. Gross that the dead man always approached me cursing and laughing. He was always cursing and laughing at me. The dead man has called me a son of a bitch before, but not every time he met me; but he has done it frequently.

53 M. L. GROSS, sworn for the State, testified as follows:

Direct examination by Mr. HERRINGTON.

The conversation I had with this man Hamp Kennedy a few minutes ago was this: I saw this witness out on the front yonder, and asked him if he remembered the time that this fellow was killed, and he said he did, and I asked him if he was certain, and he said yes. He told me that the whole conversation as to the money changing and all of that was between him and the dead man, and that no remarks at all were addressed to Solomon Brantley by the dead man. That was exactly what he told me.

JOHN JOINER, sworn for the State, testified as follows:

Direct examination by Mr. HERRINGTON:

I could not tell how long it was after this man was shot before I reached him, but it was just a few moments. There was a whole crowd standing there when I got there. I never made any examination of the man's body. He had no pistol on him; he was shot twice in the breast, once in the arm, and twice in the back.

Cross-examination by Mr. COOPER:

I never saw the beginning of the difficulty. I don't know anything about what it started about. I lived in Harrison at
54 that time. I was a carpenter, and I knew Hannah, the dead negroe's, character pretty well at that time. I always considered him a very quiet darkey. I never had heard of his killing a man; I never did hear of it. I knew Solomon Brantley pretty well when he was a boy, but for the last four or five years I wasn't around him but very little. I never saw him fussing or having any fuss. I do not know that I ever heard of his getting into any trouble until this killing occurred. When I knew him, his character for peaceableness as a negro was good; when I knew him, when he was a small boy under the control of his father. I never heard of his being in any fuss or row at all until this killing occurred. As to what became of the defendant after the killing, I never saw him. He run off; he didn't stay there. I have seen one time since the difficulty took place in the Big Ohoopie Swamp, or near the Big Ohoopie Swamp, and I saw him go into the swamp. I never did hear any threats made by the deceased, Hannah, against this man. I did not hear him say that afternoon that he was going to kill him. I didn't hear any language used between them before the killing. I don't know what led up to the killing. I don't know what the killing was about right at that time. I had heard some talk about them having a difficulty between them—I had heard some talk about that before, about the difficulty between them—but as to whether the difficulty caused the shooting or not, I don't know. I knew there was a
55 difficulty between the two darkies. I did not know whether there was any hard feelings between them at that time or not. I had heard that they had had a little fuss and some words. The dead man did not have a pistol. I was thirty steps from him when the shooting occurred, and I broke and run up there and there was a lot of white people there, I thought possibly it might be a friend of mine or something that I help to sqush the row. Just as I run up I saw this negro fall and some of them picked him up and took him to Dr. Peacock's office, and I went up there with him and was with him until he died. I did not feel in his pockets, but I stood there and hope Dr. Peacock to turn him over to dress the wounds. I was sitting on the bench and the doctor was dressing the wound, and he examined it here in the back and then he turned him over and I could see every pocket, and that is how I knew that he didn't have anything in there. I didn't feel in his pockets for a pistol; I don't know whether he had a knife or not.

Redirect examination by Mr. HERRINGTON:

I knew that he didn't have a pistol because I saw every pocket he had, and if he had had one I would have seen the sign of it. I said that I knew that he never had a pistol, because the pistol would have made some sign, large enough for me to have seen it. I
56 am not a doctor. I do not know whether he had a knife in his pocket or not.

HARRIS JOINER, sworn for the State, testified as follows:

Direct examination by Mr. HERRINGTON:

I saw this man, Tom Hannah, the night that he was killed. I never examined him myself to see whether he had a pistol on his person or not. I saw him examined after he was shot. There was some darkies that examined him. I don't remember their names. He didn't have any pistol on his person; he didn't have anything, only a five-dollar bill, that I saw.

Cross-examination by Mr. COOPER:

I didn't see him examined where he was shot. I suppose it was fifteen or twenty minutes, maybe longer, before I saw him. I didn't swear whether there had been several people hold of him around there or not. I wasn't there until they carried him to the doctor's office. I don't know whether he had one at the place when he was shot or not. John Joiner, I think, was in the doctor's office with him. I won't be positive. I was there myself. I was there close to it when the shooting started, and I saw a part of it. I saw the last part of the shooting. After the first shot, I saw then the remainder of it.

57 State closes.

Supplemental statement of the defendant.

I was afraid of this man and tried to dodge him to keep him from hurting me, and Mr. Irvin Brantley got me to go to Soperton, Georgia, to keep him from hurting me.

By Mr. COOPER:

Q. Had he threatened your life often?

A. Yes, sir; he threatened my life. He said he had killed one son of a bitch and he was going to hang for me. He has threatened my life often. He has told Mr. Brantley several times that he was going to kill me, and I tried to dodge him as much as I could.

Defendant closes.

We, the undersigned, counsel for plaintiff and defendant in the above-stated case, hereby agree that the foregoing is a true and correct brief of the evidence delivered on the trial of said case.

The foregoing brief of evidence in the case of Solomon Brantley, charged with murder, is hereby approved as being true and correct, and ordered filed as a part of record in said case.

This 17 day of October, 1908.

B. T. RAWLINGS, *Judge S. C. M. C.*

58 In Washington Superior Court, March term, 1909. Plea of former jeopardy autrefois acquit.

STATE OF GEORGIA *v.* SOLOMON BRANTLEY.	Bill of indictment for murder. Convicted of voluntary manslaughter.

Now comes Solomon Brantley, the defendant in the above-stated case, and before arraignment and plea, pleaded to said indictment

and files and submits this, his special plea in bar, and pleads former jeopardy autrefois acquit, as follows:

1. Defendant pleads former jeopardy.

2. Defendant pleads autrefois acquit.

3. Defendant alleges that at the regular September term, 1908, of Washington Superior Court he was arraigned and tried on a bill of indictment, charging him with the offense of murder, in that he did kill Tom Hannah on the 5th day of May, 1906, and was convicted by the jury of the offense of voluntary manslaughter, and sentenced by the court to the term of seven years in the Georgia penitentiary, from which conviction he appealed his case to the Court of Appeals of Georgia, and obtained a reversal.

4. At the September term, 1908, of Washington Superior Court, he was arraigned, tried, and acquitted before a jury on this same indictment returned at the September term, 1908, of Washington Superior Court, charging him with the offense of murder, alleged to have been committed at the same time and place, on the
59 same person, and on the trial the same evidence was had and the same issues were made and exist as would necessarily be made on the trial of this case. That the offense is the very same offense that he is now charged with.

5. Defendant alleges that the Superior Court of Washington County had full and complete jurisdiction to try him on this very same bill of indictment that he is now called upon to plead to, which is the identical case in every respect that he was tried for and acquitted by a jury.

6. The defendant alleges that if he is forced to trial on this bill of indictment upon which he has been fully discharged and acquitted for murder when the jury reduced the case from murder to manslaughter on the former trial, that he will be put in jeopardy of his life and liberty for the same offense the second time, which is forbidden by the Constitution and laws of the United States of America.

7. Defendant alleges that the court compel State's attorney to arraign the prisoner on trial for the offense of voluntary manslaughter and not for murder. He alleges that he ought not to be put upon trial for the offense of murder, from which he was fully acquitted at the former trial by the jury empanelled to try him at the regular September term, 1908, of Washington Superior Court.

60 The defendant for further plea shows that his acquittal of murder on the first trial cut the right of the State of Georgia off forever to try him the second time for the same offense. Your petitioner alleges that his conviction for the offense of voluntary manslaughter on the said bill of indictment for murder forever acquitted him of the offense of murder, and that if he is forced to trial at this present term of the Superior Court, that he will be subjected in jeopardy of his life and liberty the second time for the same offense, which is in direct conflict with the fifth amendment of the

Constitution of the United States, which prohibits second jeopardy for the same offense.

Your petitioner further alleges that if he is forced to trial on said bill of indictment, charging him with the offense of murder, that he will be deprived of due process of law, and the equal protection of the law, guaranteed to him by the Constitution and laws of the United States, and especially the 14th amendment thereto.

The defendant stands ready to prove that the offense is the same charge in the bill of indictment, and prays reference to bill of indictment and the brief of evidence had on the former trial, hereto attached, or admitted in evidence as true.

Wherefore the defendant pleads former jeopardy, and prays that the bill of indictment against him, so far as the murder charge, be quashed, and that he be fully discharged and acquitted from
61 the further custody of the law on the charge of murder, and that he be held only to answer and be tried for the offense of voluntary manslaughter, and the defendant will ever pray.

JOHN R. COOPER,
Atty. for Defendant.

The facts in the foregoing plea are sworn to as true and correct, before me this Mch., 1909.

SOLOMON (his x mark) BRANTLEY.

Sandersville, Ga. Mack Sessions, clerk S. C. W. C. Ga., Mch. 4, 1909.

After hearing the plea of former jeopardy and the demurrer, the same is hereby overruled and the demurrer sustained.

This 4 March, 1909.

B. T. RAWLINGS,
J. C. C. M. C.

Filed in office March 4, 1909.

MACK SESSIONS,
Clerk S. C. W. C.

62 Writ of error from Washington Superior Court.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR,
v.
STATE OF GEORGIA, DEFENDANT IN ERROR. } Bill of indictment for murder, plea of former jeopardy.

STATE OF GEORGIA, *Washington County:*

Now comes Solomon Brantley, plaintiff in error in the above stated case, who being duly sworn, deposes and says:

That owing to his poverty he is unable to pay the cost in the said case, and that his counsel has advised him that he has good cause for writ of error to the Supreme Court of Georgia.

SOLOMON (his x mark) BRANTLEY.

Sworn to and subscribed before me this 23 day of March, 1909.

R. M. BROWN, *J. P.*

63 SANDERSVILLE, GA., *March 26, 1909.*

I hereby certify that the foregoing pages hereto attached contain a true transcript of such parts of the record as are specified in the bill of exceptions, and required by the order of the presiding judge, to be sent to the Supreme Court in the case of Solomon Brantley, plaintiff in error, v. State of Georgia, dfeendant in error.

I further certify that the term of said court, at which said case was tried, adjourned March 6, 1909. All of which appears from the record and minutes of said court.

Witness my signature and the seal of said court, affixed the day and year first above written.

[SEAL.] MACK SESSIONS,
Clerk Superior Court Washington Co., Ga.

64 (Endorsed:) No. 7 criminal docket. March term, 1909. Supreme Court of Georgia. Brantley v. The State. Transcript of record. Filed in office March 31, 1909. W. E. Talley, D. C. S. C. Ga.

65 BRANTLEY
v.
THE STATE. } 7 Crim., March term, 1909.

By the COURT:

When a person has been indicted for murder and convicted of voluntary manslaughter, if he voluntarily seeks and obtains a new trial, he is subject to another trial generally for the offense charged in the indictment, and upon such trial he can not successfully interpose a plea of former acquittal of the crime of murder, or former jeopardy in regard thereto.

(a) This ruling is in accord with article 1, sec. 1, par. 8, of the constitution of the State (Civil Code of 1895, § 5705), which provides that: "No person shall be put in jeopardy of life, or liberty, more than once for the same offense, save on his or her own motion for a new trial after conviction, or in case of mistrial."

(b) The fifth amendment of the Constitution of the United States, including the statement, "Nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb, * * * nor be deprived of life, liberty, or property, without due process of law," was a limitation upon the power of the Federal Government, and not upon the individual States.

(c) If one has been indicted for murder and convicted of
66 manslaughter, and, under a provision of the state constitution to the effect that if a new trial is granted to a convicted person on his own motion it shall be another trial generally for the offense charged in the indictment, moves for a new trial and obtains it, thus voluntarily causing the verdict to be set aside, the clause of the fourteenth amendment of the Constitution of the United States, prohibit-

ing any State from depriving a person of life, liberty, or property without due process of law or denying to any person the equal protection of the laws, does not prevent him from being again tried for murder.

LUMPKIN, J.:

Solomon Brantley was indicted in a single count for murder, and on the trial was convicted of voluntary manslaughter. He moved for a new trial, which was refused, and he carried his case to the Court of Appeals, by writ of error, and there obtained a reversal. (See 5 Ga. App., 457.) When the case again came on for trial in the Superior Court, he filed a plea of former acquittal and former jeopardy, contending that the verdict finding him guilty of voluntary manslaughter had the legal effect of finding him not guilty of murder, and therefore he could not be again put on trial for murder, but only for manslaughter. The presiding judge sustained a demurrer to the plea. This is the only ruling of which complaint is now made.

In some States the constitution or a statute declares that
67 the granting of a new trial to one convicted of a crime places him in the same position as if no trial had been had, or contains provisions having that effect. In the absence of such constitutional or statutory provision, where one who has been indicted for murder and convicted of manslaughter moves for and obtains a new trial, the authorities are not in harmony as to whether he can be again placed on trial for murder or only for the lesser offense, under the general prohibition contained in state constitutions against putting a person twice in jeopardy for the same offense. The greater number of authorities take the view that a verdict of manslaughter involves an acquittal of murder, and that a new trial granted on motion of the accused after conviction of the lesser offense is not to be considered as a new trial for the greater offense of which he was acquitted, but must be confined to a retrial of the offense of which he was convicted, as the accused should not be deemed to have waived his right in so far as he was acquitted. The contrary view, which is held by other authorities, with the reasons therefor, may thus be stated: The defendant was found guilty of the lesser offense of manslaughter, included in the charge of murder. Had he permitted the verdict to stand he could have claimed whatever legal results flowed from it, including the implication that, as he was found guilty of manslaughter, he was not guilty of the higher offense of murder, and that the affirmative finding that he was guilty of the lesser involved in it the exclusion of the greater. But the
68 accused can not both voluntarily set aside the verdict and also hold to it. A verdict can not at the same time be of force and not of force. The verdict of guilty is single. He can not divide it into that which pleases him and that which does not. The positive fact is the verdict of guilty of one offense. The negative implication from that finding is not guilty of the other offense. It

is not easy to see how the positive finding which furnishes the sole basis for the negative implication can be destroyed and set aside by the voluntary action of the accused and yet leave the implication to stand alone without a basis. To sustain a plea of former acquittal, there must be a subsisting record of an acquittal. If the verdict of guilty of the lesser offense operates as a record of acquittal of the greater, when it is set aside at the instance of the accused it is certainly no longer a subsisting record of conviction. Can it be said to stand as a subsisting record of acquittal? When on motion of the accused the verdict is set aside, no verdict is left. When he asks a new trial and it is granted, it is a complete new trial, not a partial one. The accused is tried on the indictment, not on it as limited by the results of a verdict which he himself has voluntarily caused to be set aside and rendered ineffective.

This view was taken in the early case of Bailey v. State (26 Ga., 579). That decision has never been overruled; although Simmons, C. J., in view of other authorities, said that it involved a ques-
69 tion of pleadings, and indicated some doubt as to what would be the ruling were it not for the express provision included in our present constitution on the subject. Waller v. State (104 Ga., 505). In Small v. State (63 Ga., 386) the grant of a new trial was not under consideration, but the judgment on a verdict of guilty was arrested solely on the ground that the judge who presided at the trial was unauthorized by law to hold the court; and it was held that the prisoner could be again tried on the same indictment, whether the arrest of judgment or the setting aside of the verdict was erroneous or not, as he was concluded by a judgment rendered at his own instance, to which the State could not except.

If the question be argued from the standpoint of former jeopardy, rather than that of former acquittal, and the two be not the same within the meaning of the constitution, as to the thing inhibited, the result must be the same. A court can grant a new trial to a person convicted of crime, and retry him, or it can not. On the first trial the accused has been placed in jeopardy as to the offense of which he was actually convicted, quite as much as in respect to the offense of murder. If, under the constitution, he could never be put in jeopardy again for any offense involved in the former trial, and could not waive such guaranty, and if he moved for and obtained a new trial, he could never be tried again at all. The grant of a new trial would be equivalent to a discharge. It is generally conceded that he
70 could waive the constitutional protection against putting him twice in jeopardy, by asking for a new trial and obtaining it, at least as to the offense for which he was convicted. United States v. Ball (163 U. S., 662). If so, then whether the waiver merely has the effect of allowing a new trial as to the lesser offense, or on the indictment as if there had been no previous trial, is a matter of degree and of construction of the extent of the waiver which the law declares the accused makes in asking for a new trial.

In those States where statutes have been passed declaring that, if on motion of the accused a new trial is granted, it shall be a complete new trial, we have found no instance in which such a statute has not been upheld. Enactments of that character are in substance merely legislative declarations or provisions that when the accused moves for and obtains a new trial he waives any right to set up former jeopardy to prevent a complete new trial, or estops himself from so doing. If, therefore, the declaration that the accused can not be put on trial for murder after he has caused a conviction of manslaughter to be set aside and a new trial to be granted to him is based on constitutional grounds, such legislative acts could not change the result. If the position be not based upon any strict constitutional inhibition against retrying the accused for murder, after the grant of the new trial, but upon a question of what is the extent of the waiver which the accused makes when he applies for and obtains a new trial,
71 we need not repeat what has already been said as to the inconsistency in permitting a person convicted of a crime to ask that the verdict of guilty of manslaughter be set aside and a new trial be granted to him, and that he be allowed to destroy the verdict in so far as it affirmatively affects him injuriously, but retain the benefit of all implications arising in his favor therefrom.

We are aware of the contrary position which is taken by a number of decisions and some text-writers, but other courts have adopted views similar to those above expressed. In Trono v. United States (199 U. S., 521, 533) it was said, in the opinion delivered by Mr. Justice Peckham: "In our opinion the better doctrine is that which does not limit the court or jury, upon a new trial, to a consideration of the question of guilt of the lower offense of which the accused was convicted on the first trial, but that the reversal of the judgment of conviction opens up the whole controversy and acts upon the original judgment as if it had never been." See also State v. Gillis (73 S. C., 318; 6 A. & E. Ann. Cas., 993); Bohanan v. State (18 Neb., 57); State v. Kessler (15 Utah, 142); State v. Bradley (67 Vt., 465); United States v. Harding (1 Wall. Jr. (C. C.), 127); State v. Behimer (20 Ohio St., 572; 2 Story, Const., § 1787). In States where statutes on the subject are referred to, see Veatch v. State (60 Ind., 291); Commonwealth v. Arnold (83 Ky., 1). As to the conflict of authority on the subject, see note to Trono v. United States (4 A. & E. Ann. Cas., 778).

If what has been said were not correct, some very peculiar
72 results would follow in this State. Thus it has been held, that where on the trial of one indicted for murder the evidence demands either a verdict of guilty of murder or an acquittal, and under no theory presented by the evidence or the statement of the defendant can he be properly convicted of voluntary manslaughter, it is error for the court to give to the jury a charge to the effect that he may be found guilty of that offense, and that a verdict finding him guilty of voluntary manslaughter is contrary to law and a new trial will be granted to him on that ground. Berry v. State (122

Ga., 429). In that case a new trial was granted to the accused on the ground that there was no element of voluntary manslaughter in the case and that he should have been found guilty of murder or acquitted. In Kelsey v. State (62 Ga., 558), the accused was indicted for rape, and was convicted of assault with intent to rape. He moved for a new trial, which was refused by the trial court, and exception was taken. The Supreme Court granted him a new trial, holding that "Where the evidence is conclusive that the carnal knowledge was realized and the only possible question is concerning the force and the consent, a verdict finding the prisoner guilty of an assault with intent to rape is contrary to law." The Penal Code, § 19, declares that, "No person shall be convicted of an assault with intent to commit a crime, or of any other attempt to commit any offense, when it shall appear that the crime intended, or the offense attempted, was actually perpetrated by such person at the time of such assault, or in pursuance of such attempt." Other similar cases might be cited. If the contention that on a new trial the accused could only be tried for the offense of which he had previously been convicted were sustained, then in such cases the defendant could set aside the verdict as unwarranted and obtain a new trial on the ground that the evidence proved him guilty of the greater offense and not of the lesser; and when again arraigned, could prevent a trial for the greater offense, and thus in effect could be set free by satisfying the reviewing court that he was in fact guilty of the greater offense instead of the lesser included in it.

73

But if it were otherwise in the absence of statutory or constitutional provision, the constitution of the State (Civil Code, § 5705) expressly provides that "No person shall be put in jeopardy of life or liberty more than once for the same offense, save on his or her own motion for a new trial after conviction or in case of mistrial." A mistrial operates in this respect as no trial. A new trial, as used in the constitution, means new trial generally. Waller v. State (104 Ga., 505); Yeates v. Roberson (4 Ga. App., 573).

If the State affords a convicted person, at his option, the privilege of causing a verdict to be reviewed and set aside on account of error, he can not say that his own conduct shall have no effect against him, either as a waiver or estoppel, or by virtue of the constitution itself. He may waive a trial altogether, including the constitutional guaranty of trial by jury, and plead guilty. Former jeopardy is a matter which must be duly pleaded, or the defense will be treated as waived. Hall v. State (103 Ga., 403); Kansas v. White (71 Kans., 356).

74

It was contended that to place the defendant on trial for murder, after he had been convicted of manslaughter and had sought and obtained a new trial through a reversal granted by the Court of Appeals, would be violative of the clause of the fifth amendment of the Constitution of the United States in regard to former jeopardy. Such a contention is without merit. It is now well settled that the fifth amendment to the Constitution of the United Sates was in-

tended to operate upon the Federal Government and not to limit the powers of the States, in respect to their own people. Barron v. Mayor, etc., of Baltimore (7 Peters, 242); Twitchell v. Commonwealth (7 Wall., 321); Spies v. Illinois (123 U. S., 131, 166).

It was also contended that to again place the accused on trial for murder would be violative of the provisions of the fourteenth amendment of the Constitution of the United States, in that he would be thereby be deprived of due process of law and the equal protection of the laws. We think it requires no argument to show that those provisions have no application to the case. That amendment does not deal with the regulations established by state laws and state constitutions under which a person convicted of crime may move for a new trial or carry his case to a review court, or the extent of the new trial which will be granted to him if he elects of his own motion to invoke the aid of such statutory or constitutional provi-
75 sions, provided only they furnish due process of law and do not deny the equal protection of the laws. There is nothing in the Georgia constitution or laws having any such effect as to the accused. He has been accorded a trial before a court of competent jurisdiction. No claim is made that he was not duly and regularly tried in accordance with the forms of law, nor is any other error assigned except on the point hereinbefore discussed. He has apparently fallen into the same error as did Rawlins, which is thus referred to by Mr. Justice Holmes: "At the argument before us the not uncommon misconception seemed to prevail that the requirement of due process of law took up the special provisions of the state constitution and laws into the fourteenth amendment for the purposes of the case, so that this court would revise the decision of the state court that the local provisions had been complied with. This is a mistake. If the state constitution and laws, as construed by the state court, are consistent with the fourteenth amendment, we can go no further. The only question for us is, whether a State could authorize the course of proceedings adopted, if that course were prescribed by its constitution in express terms." Rawlins v. Georgia (201 U. S., 638).

The fourteenth amendment did not radically change the whole theory of the relations of the state and the federal governments to each other, and of both governments to the people. In re Kemmler (136 U. S., 436, 448); Hurtado v. People of California (110 U. S., 516). In Leeper v. Texas (139 U. S., 462) it was said: "By the
76 fourteenth amendment the powers of States in dealing with crime within their borders are not limited, except that no State can deprive particular persons, or classes of persons, of equal and impartial justice under the law; that law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied; and that due process is so secured by laws operating on all alike; and not subjecting the individual to the arbitrary exercise of

the powers of government unrestrained by the established principles of private right and distributive justice."

Judgment affirmed. All the justices concur.

77 Supreme Court of the State of Georgia, Atlanta, May 12, 1909.

The honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

SOLOMON BRANTLEY
versus
THE STATE.

This case came before this court upon a writ of error from the Superior court of Washington County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the justices concur.

78 GEORGIA, *Washington County.*

In the Superior Court of said county.

The grand jurors selected, chosen and sworn for the county of Washington, to wit:

1. C. B. Chapman, foreman.

2. B. R. Tanner,	13. J. E. Dukes,
3. R. M. Layton,	14. W. C. Murphey,
4. M. R. Tucker,	15. J. R. Mills,
5. L. A. Gladin,	16. L. W. Webster,
6. W. A. Woods,	17. R. L. Stephens,
7. E. J. Smith,	18. J. E. Moye,
8. J. R. Smith,	19. B. F. Boatright,
9. J. T. Amerson,	20. W. A. Bell,
10. H. S. Sessions,	21. J. P. Webster,
11. H. M. King,	22. E. H. Lawson,
12. G. C. Walker,	23. D. G. Moye.

In the name and behalf of the citizens of Georgia charge and accuse Solomon Brantley, of the county and State aforesaid, with the offense of murder. For that the said Solomon Brantley, on the 5th day of May in the year of our Lord nineteen hundred and six, in the county aforesaid, with force and arms one Tom Hannah in the peace of God and said State then and there being, then and there unlawfully, feloniously, willfully, and of his malice aforethought, did kill and murder, by shooting the said Tom Hannah with a certain pistol which the said Solomon Brantley then and there held, and giving to the said Tom Hannah then and there a mortal wound, of which wound the said Tom Hannah died.

79 And so the jurors aforesaid, upon their oath aforesaid, do say that the said Solomon Brantley him the said Tom Hannah in manner and form aforesaid, unlawfully, feloniously, wilfully, and

of his malice aforethought, did kill and murder, contrary to the laws of said State, the good order, peace and dignity thereof.

Washington Superior Court, September term, 1908.

ALFRED HERRINGTON, *Solr. Genl.*
JOE HANNAH, *Prosecutor.*

80 *Verdict of the jury.*

We, the jury, find the defendant guilty and recommend that he be imprisoned in the penitentiary during the period of his natural life.

J. L. HATTAWAY,
Foreman.

Sentence of the court.

GEORGIA, *Washington County.*

THE STATE
v.
SOLOMON BRANTLEY. } Murder.

Verdict of guilty with recommendation at the March term, 1909, of the Superior Court of said county.

Whereupon it is the judgment of the court that you, Solomon Brantley, be taken hence from the court-house to the common jail of Washington County and be kept in safe custody till demanded by a guard from the penitentiary, and be taken hence by said guard to the penitentiary at Atlanta, or such other place as the governor shall direct, and be there confined at hard labor for the space of your natural life.

This 6th day of March, 1909.

ALFRED HERRINGTON,
Solicitor-General.
B. T. RAWLINGS,
Judge S. C. M. C.

81 STATE OF GEORGIA, *Washington County.*

Be it remembered that there came on for trial at the regular March term, 1909, of the Superior Court of Washington County, a certain cause then and there pending between the State of Georgia and Solomon Brantley, the same being a bill of indictment charging the defendant, Solomon Brantley, with the offense of murder. He was tried and convicted by the jury of the offense of murder without capital punishment, the Hon. B. T. Rawlings, judge of said court, presiding. During said term and before the adjournment thereof, on the 5th day of March, 1909, defendant filed his motion for a new trial. The Hon. B. T. Rawlings, judge as aforesaid, on the 5th day of March, 1909, granted an order commanding the solicitor-general of the State to show cause on the 26th day of April, 1909, at Statesboro, Georgia, why a new trial should not be granted. At which time the

said motion for a new trial came on regularly to be heard on the 26th day of April, 1909. After argument had by counsel for both sides of the case, and after the brief of the evidence and charge of the court had been approved as true, and after all the grounds of the original motion and the amended motion for a new trial had been approved as true and consistent as to what transpired on the trial of said case, and after duly considering said motion, his honor, B. T. Rawlings, judge as aforesaid, on the 10th day of May, 1909,
82 overruled and refused said motion for a new trial on all the grounds thereof. To which ruling of the court the defendant then and there excepted on the 10th day of May, 1909, and now accepts and assigns the ruling of the court as error, and says that the court committed error in declining to grant a new trial to the defendant, and in overruling and refusing a new trial on all the grounds set up in said original motion and amended motion for a new trial. To which ruling of the court the defendant then and there excepted, and now excepts and assigns the ruling of the court as error.

Now comes Solomon Brantley, who is here the plaintiff in error, and specifies as a material part of the record to be sent up in a transcript of the record to the present term of the Supreme Court of the State of Georgia, the following, to wit:

1. The bill of indictment, verdict of the jury, and sentence of the court.
2. The charge of the court approved.
3. The brief of the evidence approved.
4. The amended motion for a new trial, together with all orders thereon.
5. The original motion for a new trial with all orders thereon.
6. The order of the judge declining to grant a new trial in said case.

83 Now comes Solomon Brantley, the plaintiff in error, within twenty days after the overruling of his motion for a new trial and tenders this, his bill of exceptions, and asks that the same may be signed, certified, and allowed, according to the forms of the statute in such cases made and provided, that the errors alleged to have been committed may be reviewed and corrected, and the defendant will ever pray.

Respectfully submitted.

JOHN R. COOPER,
Counsel for plaintiff in error.

Post-office address, Macon, Ga.

Certificate of the judge.

I do certify that the foregoing bill of exceptions is true and specifies all of the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the Superior Court of Washington County is hereby ordered to make out a complete copy of such parts of the record in said case as

are in this bill of exceptions specified, and certify the same as such and cause the same to be transmitted to the present term
84 of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This May 17, 1909.

B. T. RAWLINGS,
Judge S. C. M. C.

Clerk's certificate.

CLERK'S OFFICE, SUPERIOR COURT OF WASHINGTON CO.,
Sandersville, Ga., June 1909.

I hereby certify that the foregoing is the true original bill of exceptions filed in this office in the case therein stated, and that a copy thereof has been made and is now of file in this office.

Witness my signature and the seal of said court hereto affixed, the day and year last above written.

[SEAL.]

MACK SESSION,
Clerk.

85 BRANTLEY *v.* THE STATE. } 15 Crim. Mch. term, 1909.

By the COURT:

Per ATKINSON, J.:

1. In the absence of an appropriate written request it was not cause for the grant of a new trial that the judge, while charging upon the law of reasonable doubt, omitted to charge that the jury might consider the prisoner's statement in determining whether or not there was a reasonable doubt of his guilt, the judge, in other portions of the charge, having instructed the jury concerning the weight which might be given to the prisoner's statement. See Walker v. State (118 Ga., 34; 44 S. E., 850); Jordan v. State (130 Ga., 406; 60 S. E., 1063).

(a) It is not "any doubt," but a "reasonable doubt," which will suffice as the basis for an acquittal. See Hunter v. State (133 Ga.; 65 S. E., 154).

2. One ground of the motion for a new trial was as follows: "Because the court erred in admitting the following testimony of a witness for the State, over objection: 'Have you ever heard about Solomon Brantley's character by what others told you?—(A.)
86 Yes, sir; I was warned by a half a dozen or more that I had better be on the watchout, if I ever had any trouble with him to be prepared for him. I heard that he was in the habit of carrying concealed weapons.'" It was stated that the "defendant objected to this evidence on the ground that it was illegal testimony, because it was going into the specific acts of the defendant and into the details of the difficulty, to wit, carrying concealed weapons. This is for-

bidden by law." In the brief of evidence the direct examination of the witness contains no statement that he heard that the defendant was in the habit of carrying concealed weapons, but on the cross-examination he testified: "I have never been told by men that he was armed. Held: (a) That the defendant, having put in evidence his character for peaceableness, the State could reply thereto; but it was his general character for violence or peaceableness which could be shown in rebuttal, not hearsay that defendant had done particular things. (b) However, under the evidence and the prisoner's statement in this case, showing that he was armed with a pistol on the occasion of the homicide, and did shoot the deceased, the admission of the evidence did not require a new trial.

3. Where on the trial of a criminal case a witness was introduced by the accused, it was not competent to show that on a former trial of the same case he had been introduced by the State and had
87 sworn substantially as on the last trial; and this is true although, when introduced by the accused, the State sought to impeach the witness, unless such impeachment was sought to be made on the ground of a difference between his testimony on the first and second trial, in which event it would be competent to show that there was no variance in his testimony.

4. A motion to postpone the further progress of a criminal case and allow time for the attorney of the accused "to recovery and get in shape to argue the case," was addressed to the sound discretion of the judge, and under the showing made and the opportunity of the court to observe the condition of counsel who was present trying the case, there was no abuse of discretion in overruling the motion, especially as the court offered to allow counsel time in which to argue the case. See, in this connection, Rawlins v. State (124 Ga., 31 (19); 52 S. E., 1); Carter v. Pitts (125 Ga., 792; 54 S. E., 695).

5. The evidence was sufficient to support the verdict.

6. In the light of the evidence and the charge of the court, there was no error in any of the other grounds of the motion for a new trial which requires the grant of a new trial for any of the reasons assigned.

Judgment affirmed. All of the justices concur.

88 Supreme Court of the State of Georgia. Atlanta, August 14, 1909.

The honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

SOLOMON BRANTLEY
versus
THE STATE.

This case came before this court upon a writ of error from the Superior Court of Washington County; and, after argument had, it

is considered and adjudged that the judgment of the court below be affirmed. All the justices concur.

CLERK'S OFFICE,
SUPREME COURT OF THE STATE OF GEORGIA,
Atlanta, Ga., Sept. 28th, 1909.

I hereby certify that the foregoing pages hereto attached contain the original writ of error to the Supreme Court of the United States of America and original citation, with copies of the petition and prayer for reversal, of the bond and of the assignment of errors, in the case of Solomon Brantley vs. The State of Georgia, together with true and complete copies of the bill of exceptions and transcript of record, and of the opinion and judgment of the Supreme Court of the State of Georgia in said case, as appears from the records and files of this office, which judgment was rendered May 12, 1909; and that attached thereto are true and complete copies of the indictment, verdict, and judgment of the Superior Court of Washington County, Georgia, and of the bill of exceptions, opinion and judgment of the Supreme Court of the State of Georgia in the case of Solomon Brantley v. The State of Georgia, as appears from the records and files of this office, which last-mentioned judgment was rendered August 14, 1909.

Witness my signature and the seal of the Supreme Court of Georgia, hereto affixed, the day and year first above written.

[SEAL.] Z. D. HARRISON,
Clerk of the Supreme Court of the State of Georgia.

90 In the Superior Court of Washington County. March term, 1909.

STATE OF GEORGIA
vs.
SOLOMON BRANTLEY. } Bill of indictment for murder. Amended motion for new trial.

Now comes Solomon Brantley, the defendant in the above-stated case, and moves to amend his motion for a new trial on the following grounds, to wit:

* * * * * * *

11. Because the court erred in not stopping the trial of the case on request of defendant's counsel, and not giving defendant's counsel time to recover and get in shape to argue the case for the defendant upon the following statement made by the defendant's counsel in open court at the conclusion of the testimony for both sides of the case.

Mr. COOPER'S statement: "In view of the turn of evidence in this case, the same being the testimony of Mr. Wood, a grand juror and prominent citizen of the county, I do not feel that I can proceed further with this case, and besides "I find that I have contracted a severe cold. I am suffering with bronchial trouble. I am unable to proceed further in this case. Your honor can see, and every one who hears me, that I am unable to make a speech. I can hardly

speak above a whisper and I feel that I can not do justice to the man on trial for his life, and I am afraid that to make an argument in the condition that I am would endanger my own life. I state
91 that I am not physically able to argue this man's case who is on trial for his life. It is an important case and I ask your honor to stop this trial in order for me to get able for me to make a speech in behalf of this defendant. I am the sole counsel; I have no one with me in the case to argue it."

The court declined to stop the trial or grant the counsel's request, and ordered the trial to proceed. Counsel could do nothing and the court proceeded to charge the jury.

Defendant assigns the ruling of the court as error because the court should have granted counsel time to get well, to get able to make an argument for the defendant. Human life is more precious than time. Therefore the court erred in not granting the defendant's counsel time to get in shape to argue the case, and in not suspending the trial until counsel could argue the case before the jury. Counsel assigns the ruling of the court as error and says that the court by such ruling deprived the prisoner at the bar of his constitutional rights to be presented by counsel throughout every stage of the trial. The defendant was deprived of his constitutional right of counsel to argue his case before the jury. On the trial of every capital case the defendant is entitled to the benefit of counsel who is able and willing to defend him. The Constitution guarantees this to every man accused of a crime.

92 Therefore this defendant was deprived of his constitutional right to be represented by counsel. Therefore he has been deprived of his right without due process of law and without the equal protection of the law guaranteed to him by the constitution and laws of the United States, and especially the fourteenth amendment thereto.

Defendant contends that the court committed error in not granting counsel time as requested, thereby deprived the defendant of a fundamental right guaranteed to him by the constitution of the United States, and especially the sixth amendment thereto, which guarantees the benefit of counsel.

Respectfully submitted.

JOHN R. COOPER,
Counsel for the defendant, Solomon Brantley.

AT CHAMBERS, *May 10, 1909.*

The original motion having been misplaced, this order is placed hereon. Motion for new trial overruled and a new trial refused in the within stated case.

B. T. RAWLINGS, *J. S. C. M. C.*

93 CLERK'S OFFICE OF THE SUPREME COURT OF GEORGIA,
Atlanta, Ga., Oct. 1, 1909.

I hereby certify that the foregoing pages hereto attached contain a true extract from the transcript of the record in the case of Solo-

mon Brantley, plaintiff in error, vs. The State of Georgia, defendant in error, the same being a true copy of the 11th ground of the amended motion for a new trial in said case, together with a true copy of the judgment of the court below overruling the motion for new trial in said case, as appears from said transcript now of file in this office; and I further certify that said judgment was affirmed by the Supreme Court of Georgia in its judgment rendered Aug. 14, 1909, as appears from the records of this office, and as shown by a copy of the record, said case certified by me to the Supreme Court of the United States, Sept. 28, 1909.

Witness my signature and the seal of the Supreme Court of Georgia hereto affixed, the day and year first above written.

[SEAL.]

Z. D. HARRISON,
Clerk Supreme Court of Ga.

(Indorsement on cover:) File No. 21918. Georgia, Supreme Court. Term No. 692. Solomon Brantley, Plaintiff in Error, vs. The State of Georgia. Filed December 2d, 1909. File No. 21918.

O

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 692.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

MOTION TO ADVANCE.

JOHN C. HART,
Attorney General of the State of Georgia,
for the Defendant in Error.

(21,918)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 692.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

MOTION TO ADVANCE.

Comes now John C. Hart, Attorney General, on behalf of the State of Georgia in the above stated case, and moves the court to advance the same on the docket for hearing on a day during the present term. The plaintiff in error was indicted in the Superior Court of the Middle Circuit of Georgia charged with the offense of murder and at the trial convicted of the offense of voluntary manslaughter. He filed a motion for new trial which was granted, and the verdict of conviction set aside. He was subsequently put upon trial and at the second trial convicted of murder, which con-

viction upon appeal was affirmed by the Supreme Court of Georgia.

He now appeals to this court, alleging that the Constitution of the United States has been violated in his second trial by placing him twice in jeopardy for the same offense.

The plaintiff in error is now confined in the common jail of Washington County, Georgia, and the sentence of the court is now in suspension, bringing the administration of the criminal laws of the State into disrepute; wherefore movant respectfully submits the cause should be advanced.

Notice of this motion has been served upon opposite counsel of record.

Respectfully submitted,

JNO. C. HART,
Attorney General and Solicitor
for State of Georgia.

FEBRUARY, 1910.

No. 692.

In the Supreme Court of the United States

NUMBER

OCTOBER TERM, 1909

SOLOMON BRANTLEY,
Plaintiff in Error,
vs.
STATE OF GEORGIA,
Defendant in Error.

Writ of error from the Supreme Court of the United States to the Supreme Court of the State of Georgia

Bill of Indictment for Murder.

MOTION TO PROCEED IN FORMA PAUPERIS

STATE OF GEORGIA—WASHINGTON COUNTY.

SOLOMON BRANTLEY, Plaintiff in Error,

vs.

STATE OF GEORGIA, Defendant in Eror.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA, FROM THE SUPREME COURT OF THE UNITED STATES.

In person comes before the undersigned, an officer of said State and County, duly authorized by law to administer all oaths, Solomon Brantley, colored, personally known to me to be the person he represents himself to be, and upon his oath he says, he is a poor person and because of his poverty he is unable to pay the costs in the above stated case.

SOLOMON HIS + MARK BRANTLEY.

Sworn to and subscribed before me, this the 25th day of October, 1909.

R. M. BROWN, J. P.,
97th District G., M., Washington County, Ga.

UNITED STATES OF AMERICA.

STATE OF GEORGIA—BIBB COUNTY.

In person comes before the undersigned, an officer of said State and County, duly authorized by law to administer all oaths, John Randolph Cooper, who on his oath says, that he is counsel for the plaintiff in error, Solomon Brantley, in the foregoing case, and that of his own knowledge all the statements of facts in the foregoing appeal are true.

JOHN RANDOLPH COOPER.

Sworn to and subscribed before me, this the 28th day of October, 1909.

R. F. HUNTER,
Dep. Clerk Bibb Superior Court.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1909.

SOLOMON BRANTLEY, Plaintiff in Error,

vs.

STATE OF GEORGIA.

No. 692.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF JOHN RANDOLPH COOPER, COUNSEL FOR SOLOMON BRANTLEY, PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

Solomon Brantley, a colored man and of African descent, was indicted for murder in the Superior Court of Washington County, Georgia, 1908, and on the trial was convicted of voluntary manslaughter and sentenced to the penitentiary for a term of seven years. He moved for a new trial, which was refused, and he carried his case to the Court of Appeals of the State of Georgia by writ of error and there obtained a reversal.

See 5 Vol. Ga. Appeals, p. 457.

When the case again came on for trial in the Superior Court of Washington County he filed a plea of former acquittal and former jeopardy, contending that the verdict finding him guilty of voluntary manslaughter had the effect of finding him not guilty of murder, therefore, he could not be again put on trial for murder, but only for voluntary manslaughter. The presiding judge sustained the demurrer to the plea, and ordered the case to proceed to trial. The defendant was tried and convicted for the offense of murder and sentenced to the penitentiary for

of life, liberty or property and secures equal protection to all and under like circumstances in the enjoyment of their rights in the administration of criminal laws.

That the State Court erred in putting the said defendant twice in jeopardy for the same offense, in violation of and in disregard of Article 5 of the Amendments to the Constitution of the United States, which provides, "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

It is error for the Court to deny the prisoner a trial on the issue taken on this plea in abatement before a jury.

In Alabama, Arkansas, California, Oregon, Illinois, Iowa, Louisiana, Mississippi, Michigan, Missouri, Nebraska, New York, Minnesota, Florida, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, and in the Indian Territory, the rule is that the accused cannot waive his immunity from second jeopardy, and on a new trial he can only be prosecuted for the crime for which he stood convicted.

The English Courts have gone so far, in the support of the maxim, that no man ought to be twice put in danger of his life for one and the same offense, that they have always refused a new tial in cases of felony where the indictment is valid.

The universal maxim of the Common Law of England, as Sir William Blackstone expresses it, "That no man is to be brought into jeopardy of his life for more than once for the same offense," is embraced in Article 5 of the Amendments to the Constitution of the United States.

The Constitution of the State of Georgia, Civil Code, of Georgia, section 5722, provides, "All citizens of the United States resident in this State are hereby declared citizens of this State, and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges and immunities due to each of such citizenship."

Section 5733 of the Civil Code of the State of Georgia, "Legislative Acts in violation of this Constitution, or of the Constitution of the United States, are void and the judiciary shall so declare them."

Constitution of the United States, Civil Code of the State of Georgia, section 5998, "In all cases affecting Ambassadors,

Public Ministers and Counsel, and those in which the State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exception and under such regulation as the Congress shall make."

Constitution of the United States, Civil Code State of Georgia, section 6011:

"This Constitution and the laws of the United States, which shall be made in pursuance thereof, and all statutes made or which shall be made under the authority of the United States, shall be the supreme law of the land," and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

Nothing is better settled in England and America than that you cannot subject a man to second punishment for the same offense. This defendant has been tried and acquitted by a jury of his country of the crime of murder, and on the second trial his plea could have been sustained. He should never have been tried a second time only for the offense on which he obtained a new trial, to-wit, Voluntary Manslaughter. In fact this defendant was convicted of the offense of murder as a punishment for making a motion for a new trial. It is not fair to the accused. It is not right. It is not justice. It gives the State the advantage when a person is convicted. The State can say to him, if you appeal your case and get a new trial, you will fare worse next time. In a word it threatens the defendant if he appeals his case, he is liable to suffer a more severe punishment at the second trial.

Now what are the privileges and immunities in the sense of the Constitution? They are undoubtedly the personal and civil rights which usage, tradition, habits of society, written law, and the common sentiments of people have recognized as forming the basis of institutions of the country. The first clause in the Fourteenth Amendment does not deal with any state relation, nor relations that depend in any manner upon State laws, nor is any standard among the States referred to for the ascertainment for these privileges and immunities. It assumes that there were privileges and immunities that belong to the American citi-

zen, and the State is commanded neither to make nor to enforce any law that will abridge them.

III.

THE NEGRO A CITIZEN OF THE UNITED STATES.

The Fifteenth Amendment of the Constitution of the United States confers upon the negro the right of national citizenship, therefore he is entitled to the protection of the provision in that clause of the Fourteenth Amendment which forbids a State putting one of its citizens upon trial a second time for the same offense.

The second clause of the Fourteenth Amendment protects from hostile legislation of the States the privileges and immunities of the citizens of the United States, as distinguished from the privileges and immunities of the citizens of the States.

Slaughterhouse Cases, 16 Wallace, 37.

The defendant was arbitrarily denied the right to be represented by counsel in presenting his case to the jury.

Harvey vs. Elliott, 167 U. S., 409.

Roller vs. Holley, 176 U. S., 398.

IV.

DEFENDANT WAS DEPRIVED OF BENEFIT OF COUNSEL TO ARGUE HIS CASE TO THE JURY.

The defendant was arbitrarily denied the benefit of counsel to argue his case to the jury. This fundamental right of the prisoner, to be represented by counsel at every stage of the trial, was taken away from him, which is forbidden by the laws and Constitution of the United States. Counsel, who represented the prisoner, was suffering with bronchial trouble, was unable to make a speech in the trial of the case, and so stated to the Court.

The Constitution and laws of the State of Georgia gaurantees to every person charged with an offense against its laws a fair and impartial trial and the benefit of counsel, whether or not the accused is guilty of murder, whether or not he has capacity to perform a criminal intent, his guilt must be obtained in a fair and legal manner.

Flannoigan vs. State, 106 Ga., 116.

The accused has been denied the benefit of counsel contrary to that clause of the Constitution of the United States, 6019 of the Civil Code of Geogia, which provides, "To have assistance of counsel for his defense."

The defendant may or may not be guilty of the offense with which he is charged, but if he is guilty that is no reason why the Court should be less caeful to see that he is tried and convicted in accordance with the laws of the State, in as much as the penalty is the loss of life.

Monchrief vs. State, 59 Ga., 470.

The defendant was entitled to a constitutional trial according to the laws of the land.

Owens vs. State, 13 Am. Crim. Rep. 337, 338, 346.

Also reported in 80 Miss., 499.

Section 8 of the Criminal Code of the State of Georgia, and the Constitution of the State of Georgia, says, "Every person charged with an offense against the laws of this State shall have the privilege and benefit of counsel."

Due process of law guarantees that no State shall arbitrarily deprive any citizen of a fundamental right.

Brown vs. New Jersey, 175 U. S., 176.

Allen vs. State of Georgia, 166 U. S., 140.

I conclude this brief in summing up as follows:

This is one of the most important cases tried before this Court since the Civil War, not only the life and liberty of this defendant is at stake, but the lives and liberties of other de-

fendants. Human liberty is the most sacred possession man has. Let it be remembered that we are dealing with a great right, I may even say a Constitutional right. Should such a right be narrowly or grudgingly considered? I think that the guarantees of the Constitutions and laws should not be so construed. The life and liberty of the citizen are precious things, precious to the State as to the citizen, and concern for them is entirely consistent with the firm administration of criminal justice.

I respectfully submit that the State seeks no conviction except in legal ways, and here I say in this august tribunal the spirit of fair play has been and still is one of the controlling factors. The laws under which a man must live in America are three kinds, first, the Common Law of England; second, statutes of the United States enacted by Congress and Constitution of each State; third, the Constitution of the United States, which is supreme and sovereign over all laws. It is the enactment of the whole people. Congress did not create it, it created Congress. No legislation, whether of the State or the Nation, can impair or controvene its authority. Any statute which conflicts with the Constitution is invalid. Any State Consttution which fails to conform to it is in so far forth, non-existent. Any judicial decision which contradicts it is of no binding force, over all the complexities of legislation and the perplexities of politics in America stands this law above all laws, this ultimate guarantee of fair play. The first ten amendments of the Constitution of the United States guarantee liberty, freedom of speech and the press and the right of popular assembly and petition. They protect every man in time of peace from criminal indictment, except by the grand jury, from compulsion to testify against himself, from being tried the second time for the same offense and from excessive bail and cruel punishment. They guarantee to him a trial by impartial jury, they protect his home from unlawful search and seizure, they assure him that he shall not be deprived of life or liberty without due process of law. This court holds the scales of justice with an even hand between the States and the citizens of each State. The right not to be tried the second time for the same offense is a constitutional right. This is the first time that this great question has

been raised in this Court from any State in the Union. The Kepner case and the Trono cases were both from the Philippine Islands. The opinion of the majority of the judges in the Trono case I most respectfully submit is not sound law, that case was decided by a divided court, three of the learned Justices of the Supreme Court together with the Chief Justice dissented. I refer to Mr. Justice Harlan, Mr. Justice White and Mr. Justice McKenna. Mr. Justice McKenna rendered a very able dissenting opinion, together with Mr. Justice Harlan. A citizen should never be tried a second time for the same offense, no matter what the State statute or the State Constitution says. Immunity from second jeopardy the defendant cannot waive. The Constitution of the United States is the supreme law of the land and whenever a citizen of the State has been denied a fundamental right, the Fourteenth Amendment comes to his rescue and protects him against action of the State. If there ever was a case brought to this Court from any State in the Union by a man who has been denied a fundamental right under the Constitution and laws of the United States this is the case. Here is a negro who has been tried for his life and acquitted by a jury of his county for the crime of murder and convicted for the offense of voluntary manslaughter, and because he succeeded in getting a new trial, he has again been arraigned for the crime of murder and convicted contrary to that clause of the Fourteenth Amendment which forbids the State to deprive a citizen of life or liberty without due process of law.

Respectfully submitted,

JOHN RANDOLPH COOPER,

Counsel for Solomon Brantley, Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 692.

SOLOMON BRANTLEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

In Error to the Supreme Court of the State of Georgia.

Plaintiff in error was indicted in the Superior Court of Washington County, Georgia, on a single count charging him with the offense of murder. He was tried at the September Term, 1908, by said Court, found guilty of voluntary manslaughter, filed a motion for new trial and upon appeal to the State Court of Appeals, obtained a reversal of the judgment and a new trial was ordered.

At the second trial of his case in said Superior Court of Washington County, he filed a plea of former jeopardy, claiming that he had been tried under this indictment for murder and having been found guilty by the jury of a lesser grade of homicide, it operated to acquit him of the charge of murder, and to try him again for murder under this same indictment would be to try him again for an offense of which he had been previously acquitted; and

that he could only be arraigned for voluntary manslaughter. This plea was demurred to and stricken by the Court. The case then proceeded to trial and the jury found him guilty of the offense of murder, whereupon he was sentenced to life imprisonment by the presiding judge. He filed his motion for a new trial which was overruled by the trial judge. He excepted to the overruling of his motion and assigning error thereon appealed to the Supreme Court of the State of Georgia, which Court affirmed the judgment of the lower Court in striking the plea of former jeopardy, as well as affirmed the judgment generally.

See 132 Georgia, 573; Brantley vs. State.

The plaintiff in error sued out a writ of error to the Supreme Court of Georgia from this Court, claiming that the judgment of said Supreme Court of Georgia was in violation of the Fifth Amendment of the Constitution of the United States, including the statement: "Nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb . . . . nor be deprived of life, liberty or property without due process of law," and that the provision of the Constitution of the State of Georgia, article 1, section 1, paragraph 8, (Code §5705), which provides that—

" 'No person shall be put in jeopardy of life or liberty more than once for the same offense, save on his or her own motion for new trial, after conviction, or in case of mistrial,' "

is null and void as construed by the Supreme Court of Georgia, because in violation of the provision of the

Constitution of the United States just quoted. There are other assignments of error raised, but at most they are but different ways of expressing the proposition that where a person has been convicted of a lesser grade embraced in the offense charged, under the Federal Constitution and the provision quoted, he could not again be put upon trial in the State Courts for the greater offense, even though the verdict and judgment had been set aside on his own motion.

PLEA OF DOUBLE JEOPARDY NOT AVAILABLE WHEN NEW TRIAL GRANTED ON MOTION OF ACCUSED.

Upon principle and authority it is now well recognized that the Court or jury is not limited upon a new trial to the question of guilt of the lesser offense of which the accused was convicted on the first trial, but that a reversal of the judgment of conviction opens up the whole controversy and acts upon the original judgment as if it had never been.

"The accused by his own motion has obtained a reversal of the whole judgment and may be proceeded against as if no trial had previously taken place. If he chooses to appeal from it and to ask for its reversal, he thereby waives, if successful, his right to avail himself of the former acquittal of the greater offense contained in the judgment which he has himself procured to be reversed."

Trono vs. United States, 199 U. S., 521.

In Georgia, however, the right to try the accused a second time for the same offense, where he sets the verdict aside, may be placed upon a broader ground than a

mere *waiver*, for under the Constitution of the State of Georgia it is expressly provided he may be tried again, where the verdict is set aside, "on his or her own motion for a new trial." Thus it will be seen that the Constitution of Georgia expressly excepts certain cases from its guaranty that a person shall not be put in jeopardy more than once for the same offense.

The Supreme Court of Georgia, in expounding this provision of our Constitution, said:

"One who upon an indictment for murder has been convicted of voluntary manslaughter, and to whom upon his own motion a new trial has been granted, may again be tried for murder. The true intent and meaning of paragraph 8, of section 1, article 1 of the Constitution, which declares that 'no person shall be put in jeopardy of life or liberty more than once for the same offense, save on his or her own motion for a new trial after conviction, or in case of mistrial,' is that one who, after conviction upon an indictment, voluntarily seeks and obtains a new trial thereon, becomes subject to another trial generally for the offense therein charged."

Wall vs. State, 104 Ga., 505.

Respectfully submitted,

JNO. C. HART,

Attorney for Defendant in Error.

BRANTLEY *v.* STATE OF GEORGIA.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 692. Argued April 6, 1910.—Decided April 11, 1910.

Where one has been tried in a state court for murder and convicted of manslaughter, and, on his own motion, obtains a reversal and new trial, on which he is convicted of a higher offense, and the constitution of the State provides that no one shall be put in second jeopardy for the same offense save on his own motion for new trial or in case of mistrial, there is no question involved of twice in jeopardy under the Constitution of the United States.
132 Georgia, 573, affirmed.

THE facts are stated in the opinion.

Mr. John Randolph Cooper for plaintiff in error.

Mr. John C. Hart, Attorney General of the State of Georgia, for defendant in error, submitted.

PER CURIAM: Brantley was indicted in the Superior Court of Washington County, Georgia, charged with the offense of murder; was tried and found guilty of voluntary manslaughter; filed a motion for new trial, and upon appeal to the state Court of Appeals obtained a reversal of the judgment, and a new trial was ordered.

At the second trial he filed a plea of former jeopardy, claiming that he had been tried for murder, and having been found guilty of a lesser grade of homicide that operated to acquit him of the charge of murder, and to try him again for murder under the same indictment would be to try him again for an

offense of which he had been previously acquitted, and that he could only be arraigned for voluntary manslaughter. This plea was demurred to and the demurrer sustained by the court. The case then proceeded to trial, and the jury found him guilty of murder, whereupon he was sentenced to life imprisonment. He moved for new trial, which motion was overruled, and thereupon he appealed to the Supreme Court of the State of Georgia, which affirmed the judgment of the lower court. *Brantley* v. *State*, 132 Georgia, 573.

The constitution of the State of Georgia provides that "No person shall be put in jeopardy of life or liberty more than once for the same offense, save on his or her own motion for new trial, after conviction, or in case of mistrial." This writ of error was sued out and plaintiff in error contended that the judgment of the Supreme Court of Georgia was in violation of the Fifth Amendment of the Constitution of the United States, and that the provision of the constitution of the State of Georgia was null and void as construed by the state Supreme Court.

The contention is absolutely without merit. It was not a case of twice in jeopardy under any view of the Constitution of the United States.

Judgment affirmed.